GEORGETOWN LAW

Brian Wolfman
Professor from Practice
Director, Appellate Courts Immersion Clinic

December 26, 2021

Re: Clerkship recommendation for **Rachel Schwartz**

I recommend Rachel Schwartz to serve as a law clerk in your chambers.

I got to know Rachel in the spring semester of 2020 when she was a student-lawyer in the Appellate Courts Immersion Clinic at Georgetown University Law Center. (I am the clinic's director.) The clinic handles complex appeals in the federal courts of appeals and in the Supreme Court. Students act as the principal lawyers researching and writing briefs under my supervision.

The clinic operates full-time. Students take no classes other than the clinic and a co-requisite seminar about the law of the appellate courts. (I'll comment on Rachel's work in the seminar toward the end of this letter.) I worked with Rachel every day for an entire semester—in-person until the Covid-19 crisis and then remotely—and was able to observe her as a judge would observe a law clerk or as a senior lawyer might observe a close associate. This letter, therefore, is based not on one exam, a handful of comments in class, or even a few meetings, but on an intensive, day-to-day working relationship.

I'll start with my bottom line: Rachel would be an excellent law clerk. Rachel's work in the clinic was quite strong. She analyzes legal problems well. She's a very good writer and an even better editor. She's a terrific colleague too.

I'll turn now to Rachel's major clinic projects: researching and drafting both opening and reply briefs in a one federal appeal and doing the same for an answering brief in another federal appeal.

In the first case, Rachel and another student researched and drafted a brief arguing that our client's Section 1983 employment-discrimination suit (1)

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had been adequately pleaded, and (2) was not issue-precluded by an earlier judgment. The first issue was quite difficult because the question was not whether the *factual* allegations were adequate (the typical pleading problem), but what if any obligation exists to plead the *legal* bases for one's claims. The second question—issue preclusion—was even trickier, and Rachel did a fine job researching and thinking through the difficulties of the doctrine. These were issues that law students never confront, and Rachel was called on to think a bit outside the box. She rose to the occasion. Rachel did an excellent job with the reply brief as well. She had to turn this brief around quite quickly and at the end of the semester when she was working on another opening brief and coping with the strains of virtual law practice. Yet, she did a fine job responding to our opponent's arguments without losing the basic themes we had established in our opening brief.

Rachel's second project was equally challenging. We represent a prisoner claiming that his Free Exercise rights had been violated by the prison's failure to provide religiously appropriate meals. He had successfully resisted summary judgment on the prison officials' claims of qualitied immunity. On appeal, we argued both the merits of the qualified-immunity issue and that the court of appeals lacked appellate jurisdiction over the district court's non-final order. Once again, the issues presented were not the kind normally confronted by law students in the classroom. Rachel had to learn a couple areas of the law from the ground up. Again, she did fine job, producing a brief that was analytically strong and well-written.

* * *

As noted at the top, students in my clinic are enrolled in a separately assessed seminar—the Appellate Courts and Advocacy Workshop. The first two-thirds of the course is an intensive review of federal appellate courts doctrine, including the various bases for appellate jurisdiction and the standards and scope of review. In this part of the course, the students must master the difficult doctrine and apply it in a half-dozen writing assignments that range from a motion to dismiss for lack of appellate jurisdiction to a statement of the case to a complex jurisdictional statement. We then take a short detour into Supreme Court jurisdiction and practice. Toward the end of the course, we cover a few advanced legal writing and appellate advocacy topics. Only capable students willing to work hard do well in this course. Given the course's subject matter and its blend of doctrine, writing, and practice, the course often appeals to students who desire federal judicial clerkships. Rachel's work in this class was consistently excellent. In light of Covid-19, our school switched to mandatory pass-fail grading, and so I did not grade Rachel in this

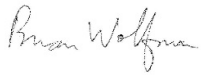
course (or in the clinic). But by the time the virus hit, and we had switched to pass-fail grading, I had assessed all but one of the seminar's writing assignments. I can tell you that the quality of Rachel's work was right at the top of the class.

* * *

Beyond Rachel's intellectual attributes, a few of her other qualities bear mention. Rachel is a serious advocate who is dedicated to her client's interests. She's honest and straightforward. She works hard. She has a lovely personality and a fine sense of humor. And, importantly, she is willing to challenge others, politely but firmly, when she believes that they need to think harder or more deeply about an issue. Not infrequently, Rachel saw problems or opportunities in cases that I or others had missed, and I appreciated her willingness to bring those things to our attention. She did this not to score points, but to ensure that we did the best job for our clients. For this reason as well, I think she'd be a fine person to have in chambers.

I'll end where I started: I recommend Rachel Schwartz for a clerkship. If you would like to talk about Rachel, please call me at 202-661-6582.

Sincerely,



Brian Wolfman

Georgetown Law
600 New Jersey Avenue, NW
Washington, DC 20001

May 09, 2022

The Honorable Kenneth Karas
Charles L. Brieant, Jr. United States Courthouse
300 Quarropas Street, Room 533
White Plains, NY 10601-4150

Dear Judge Karas:

I am most happy to recommend Rachel Schwartz for a clerkship in your chambers. She was a bright, accomplished and hard-working student and will make an excellent law clerk.

I came to know Ms. Schwartz because she enrolled in the year-long course I teach in Georgetown's alternative curriculum that combines Contracts and Torts. This is a demanding and sometimes disorienting program, organized quite differently from the way either course is taught on its own. Even many students that eventually do quite well struggle mightily in the beginning. Not Ms. Schwartz. She had the intellectual ability to handle everything that the course threw at her and the commitment to hard work to give meticulous attention to the heavy readings assigned. The organization of this course diverges from those of standard Contracts and Torts courses to the point that commercial outlines are of little value to students; Ms. Schwartz is such a dedicated student that I doubt she would have bothered with one anyway.

I gave exams at the end of each semester. Many students' performance varies consider-ably from one to the other. Again, Ms. Schwartz was the conspicuous exception, writing stand-out responses to both. I am sure I could have made the exams twice as difficult and it would not have phased her in the least.

Although Ms. Schwartz in no way neglected her coursework, even in her first year she was developing much broader interests in the law. In particular, she was interested in the inter¬section between public and private regulation, a timely topic on which I have written as well. With my encouragement, she made several appointments to come by and discuss how our system allocates responsibilities between Tort and various regulatory regimes. Whenever I would men¬tion a case or article, even casually, she would invariably have read it by our next meeting and formed a sophisticated opinion about it. Having such sophisticated conversations with a graduating third-year student would have been impressive; doing so with a first-year student was remarkable. We continued to talk throughout her law school career; she sought my comments on a fascinating note she wrote on how landlord-tenant law, various municipal ordinances, and conditions on federal funding shape housing quality in New York City.

Ms. Schwartz has all the skills required to be an excellent law clerk. She is a strong writer, she has superior legal research skills, she is a hard worker and imposes higher standards on her own work than any supervisor would ever impose on her. She reacts positively to criti¬cism and disagreement. She has impressive maturity, poise, and self-confidence without allow¬ing her considerable talents to kindle any arrogance or carelessness. And she is a courteous and pleasant human being. I expect your staff will enjoy having her in chambers.

In sum, Rachel Schwartz is an impressively talented, hard-working, and quite adaptable lawyer. She will excel as a law clerk and give all of her mentors numerous occasions for pride as she sets out on a most promising legal career. Her applications has my full and unreserved support.

Sincerely yours,

David A. Super
Carmack Waterhouse Professor of Law and Economics

David A. Super - das62@law.georgetown.edu - 202-661-6656

RACHEL H. SCHWARTZ
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Writing Sample

The attached writing sample is a Motion to Dismiss I wrote for a seminar called *Appellate Courts and Advocacy Workshop*. Based on only the limited set of caselaw given to us, we were assigned to examine whether the Sixth Circuit had jurisdiction to hear the appeal of a decision refusing to certify a class settlement. I argued on behalf of the Intervenors-Appellees that it did not.

The Motion is my own work. I wrote it independently after class discussions of Supreme Court caselaw about appellate jurisdiction under 28 U.S.C. §§ 1291-1292. The only feedback I got on it included one round of light margin-comments from my professor after I submitted it. I edited the Motion based on those comments and my own judgment with no help from others.

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

Polly Shipler; Billy Andrews; Walter Wong; Rita Jones; and all others similarly situated, Plaintiffs-Appellants, v. Cardio Products, Inc., Defendants-Appellants Grace Brown; Sheila Piercy; Marge Millett; George Wideman; and John Will, Intervenors/Class Members-Appellees.	No. XXXX Hon. XXXX, J.

Intervenors-Appellees' Motion to Dismiss

Twenty-nine-thousand recipients of pacemakers manufactured by Cardio Products, Inc. sued Cardio for damages because its pacemakers were dangerously defective. A few months later the parties reached a settlement, but the district court found it inadequate and refused to approve it. Cardio and the class of pacemaker recipients appealed the district court's denial of their settlement, but several class members, Intervenors-Appellees Grace Brown, Sheila Piercy, Marge Millett, George Wideman, and John Will, now move to dismiss this appeal for lack of appellate jurisdiction.

This Court should grant the class members' motion and find appellate jurisdiction lacking because the district court's decision does not conclusively resolve an issue that is

separate from the merits of the action, and it is effectively reviewable on appeal from a final judgment.

Factual and procedural background

Most people who have pacemakers undergo surgery every three years to replace a part of the device called the pulse generator. R. at 239 (Mem. Op. and Order 239). Cardio Products, Inc. marketed a new kind of pacemaker, advertising that its pulse generator would need to be replaced only every fifteen years. *Id.* For the convenience and savings in medical care its updated model would afford, Cardio charged ten times more money than most other models cost. *Id.* at 240 (Mem. Op. and Order 240).

As has now been established, Cardio's claim was far from true; its pacemakers provided no advantage over existing models. *Id.* Cardio's false advertising was discovered only once a series of pacemaker failures resulted in emergency surgeries and even death. *Id.* These emergencies prompted a change in protocol for recipients of Cardio's pacemaker, requiring yet unharmed recipients to undergo pacemaker upkeep surgery every three years—the same frequency as those with other types of pacemakers, and five times as often as they bargained for. *Id.*

In August of 2016, 29,000 Cardio pacemaker recipients filed a class complaint seeking three things: reimbursement for the difference in price between what they paid for the pacemaker and what they would have paid if its marketing had accurately reflected its capabilities; reimbursement for future medical care; and pain and suffering. *Id.* The class also

sought punitive damages on the grounds that Cardio knew or should have known that its pacemaker would not last more than three years and because it used false data to trick the FDA into approving it. *Id.* at 240-41 (Mem. Op. and Order 240-41).

Only four months later, on December 1, 2016, and after only minimal discovery the parties reached a proposed settlement that included a shadow of what the class sought in its complaint—that Cardio would pay for future medical care associated with replacing pacemaker devices. *See id.* at 241 (Mem. Op. and Order 241). Still, the district court preliminarily approved it and certified the class for settlement purposes only. *Id.*

About 300 class members timely filed written objections to the fairness of the settlement. *Id.* at 241-42 (Mem. Op. and Order 241-42). At the hearing, the class members argued that the settlement was unfair for two reasons: First, they argued it was unfair because two of the three pacemaker-related cases that had been tried to verdict against Cardio resulted in verdicts for over three million dollars including lost wages and punitive damages in addition to the cost of future medical care. *Id.* at 242 (Mem. Op. and Order 242). Second, they argued it was unfair to California residents, where about twenty percent of the class lives, because a California state court had overruled all of Cardio's legal defenses. *Id.*

In response, Cardio argued that its statute of limitations defense had been successful in two states and that the settlement provided sufficient prospective damages. *Id.* Class counsel responded by arguing on the one hand that the settlement adequately compensated members for emotional distress by easing their worry about medical expenses. *Id.* On the other hand, it argued that even though the settlement was inadequate as to some class members, the

settlement was a good compromise because it would achieve the greatest good for the greatest number of class members. *Id.*

On August 7, 2017, the district court denied class counsel and Cardio's motion to approve the settlement, holding that the relative strength of the parties' positions on the merits demonstrated that the settlement was not "fair, adequate, and reasonable." *Id.* at 242-43 (Mem. Op. and Order 242-43). Because most class members are elderly, the court observed, the cost of future medical care would not sufficiently compensate them for the years of unbargained-for pain as a result of buying a product that fell short of its description. *Id.* As for younger class members who are still working, the settlement would not compensate them for lost wages and other consequential damages. *Id.* at 243 (Mem. Op. and Order 243). Finally, the court took issue with the fact that the settlement provided no damages whatsoever, either compensatory or punitive. *Id.* The court decertified the settlement class and set a schedule to move toward trial. *Id.* Cardio and class counsel timely appealed. *Id.* at 245 (Mem. Op. and Order 245).

Argument

I. This Court should dismiss this appeal for lack of jurisdiction because the district court's refusal to approve the class settlement is not appealable as a collateral order.

Because the district court's refusal to certify the class settlement does not end the action for any party and does not meet the criteria for interlocutory appeal under 28 U.S.C. §§ 1292, the most plausible ground on which this Court could find jurisdiction is the final

judgment rule of 28 U.S.C. § 1291 and the collateral order doctrine. *Cohen v. Beneficial Indus. Loan, Corp.*, 337 U.S. 541, 546-47 (1949); *Wedding v. Univ. of Toledo*, 89 F.3d 316, 318 (6th Cir. 1996). The collateral order doctrine interprets the final judgment rule to mean that on rare occasions appellate courts have jurisdiction over appeals of important decisions that, though they do not end the action, are separate from the merits of the action and would not be effectively reviewable on appeal from a final judgment. *Dig. Equip. Corp. v. Desktop Direct, Inc.*, 511 U.S. 863, 867 (1994); *Cohen*, 337 U.S. at 546.

This Court has understood there to be three elements to the collateral order doctrine. *Wedding*, 89 F.3d at 318-19 (quoting *Johnson v. Jones*, 515 U.S. 304, 310 (1995)). The appealed order must (1) be conclusive, (2) resolve an issue that is separate from the case's merits, and (3) be unreviewable on appeal from a final judgment. *Id.* Whether these elements apply to the resolution of a particular claim is irrelevant in the inquiry of whether an order is a collateral order; what matters is whether these elements apply to the category of claims to which it belongs. *Cunningham v. Hamilton County*, 527 U.S. 198, 204 (1999); *Dig. Equip.*, 511 U.S. at 868. Because there is only one relevant and controlling case in the Sixth Circuit [for the purposes of this class assignment], Supreme Court and other circuits' precedent is instructive in applying these factors.

1. The district court's order is not conclusive.

To be conclusive, an order must be the final word on the subject addressed, eliminating the possibility that the district court will alter its conclusion in subsequent proceedings.

Mitchell v. Forsyth, 472 U.S. 511, 527 (1985); *Wedding*, 89 F.3d at 318 (quoting *Gulfstream Aerospace Corp. v. Mayacamas Corp.*, 485 U.S. 271, 277 (1988)). Disapproval of a settlement that, if approved, would have resulted in a final judgment is the quintessential non-conclusive order. *See Seigal v. Merrick*, 590 F.2d 35, 38 (2d Cir. 1978). *Seigal*, like this case, concerns the appeal of a district court's order refusing to certify a settlement. 590 F.2d at 36. There, the Second Circuit held that refusing to certify a settlement is not an appealable collateral order because, by definition, it is not conclusive as to whether the court will allow the parties to settle—the parties will have countless opportunities to settle as litigation moves forward. *See id.* at 37-38. And that is exactly what happened; the parties agreed on an amended stipulation while appeal was pending. *Id.* at 39. Here, like in *Seigal*, Cardio and the class will have opportunities to amend their settlement and continue negotiating an agreement as trial proceeds.

Though the district court's decision is conclusive as to the *particular* settlement, *see Seigal*, 590 F.2d at 38, there is nothing stopping the parties from advancing a settlement later in litigation with the exact same terms. The district court may yet alter its conclusion and approve the settlement's terms if, for example, over the course of litigation it becomes clear that Cardio has a stronger case than it currently seems. All the district court has decided is that, given the information currently available, the settlement was not "fair, adequate, and reasonable"; it has not foreclosed the possibility that the settlement may be considered fair in light of facts that surface as trial proceeds. R. 242 (Mem. Op. and Order 242 (citing Fed. R. Civ. P. 23(e)(2))). Just the opposite—in setting a schedule to move the case toward trial,

the court opened itself up to this exact possibility. That the district court may issue an opinion later in the regular course of this litigation approving exactly what it just denied undermines the denial's conclusiveness.

2. The district court's order is not separate from the action's merits.

To be separate from the merits of an action, an order must be "conceptually distinct from the merits" of the parties' claims. *Mitchell*, 472 U.S. at 527-28. In contrast, an order that is "inextricably intertwined with the merits of the action" because the court considers the accuracy of any facts or the sufficiency of any pleadings in its analysis of the order is not appealable as a collateral order. *Cunningham*, 527 U.S. at 205.

Though the district court said that "it is not appropriate for a court to make determinations on the merits of the class claims in deciding whether to approve a class-action settlement," it nevertheless did a merits inquiry. R. 243 (Mem. Op. and Order 243). It evaluated the "relative strength of the parties' positions *on the merits*" to determine that the "settlement is not fair, adequate, and reasonable." *Id.* (emphasis added). While neither side advanced many disputed facts, the court went on to evaluate the adequacy of Cardio's and the class's responses to intervenors' objections that, for example, "this settlement does the most good for the most people" or "effectively compensates the class members for emotional distress." *Id.* at 242 (Mem. Op. and Order 242).

And the district court's merits inquiry was inevitable. "[A]n order disapproving a settlement" in a class action is, by its very nature based "upon an assessment of the merits of

the positions of the respective parties." *Seigal*, 590 F.2d at 37 (citing *Coopers & Lybrand v. Livesay*, 437 U.S. 463, 469 (1978)).

Though the Ninth Circuit has maintained that it is possible to evaluate the fairness of a class settlement without a merits analysis by simply balancing "what plaintiffs sought in their complaint and what the settlement provided," *Norman v. McKee*, 431 F.2d 769, 774 (9th Cir. 1970), this analysis of a settlement's fairness would be inadequate. For example, if there is a mismatch between the severity of the complaint's allegations and the quality of the settlement terms, but the complaint is overambitious and unlikely to succeed, the settlement might still be fair. Without looking at likelihood of success on the merits, a court would be at risk of erroneously determining a settlement as fair or unfair.

3. The district court's order is reviewable on appeal of a final judgment.

To be reviewable on appeal of a final judgment, moving toward trial must not irreparably deprive a litigant of rights that cannot effectively be vindicated after trial has occurred. *Mitchell*, 472 U.S. at 525; *Cohen*, 337 U.S. at 546; *Wedding*, 89 F.3d at 319. The unvindicatable rights that a collateral order must deny to be immediately appealable include chiefly immunities from suit, *Will v. Hallock*, 546 U.S. 345, 350 (2006) (citing *Mitchell*, 472 U.S. at 530 (qualified immunity); *P.R. Aqueduct and Sewer Auth. v. Metcalf & Eddy, Inc.*, 506 U.S. 139, 144-45 (1993) (Eleventh Amendment immunity); *Nixon v. Fitzgerald*, 457 U.S. 731, 742 (1982) (absolute immunity); *Abney v. United States*, 431 U.S. 651, 660 (1977) (double jeopardy)), the denial of which "would imperil a substantial public interest." *Will*, 546 U.S.

at 353 (citing *Coopers & Lybrand*, 437 U.S. at 468). Because "almost any pretrial or trial order might be called 'effectively unreviewable' in the sense that relief from error can never extend to rewriting history," a simple determination of whether an order concerns an immunity from suit is insufficient. *Dig. Equip.*, 511 U.S. at 872. Instead, a determination of whether the immunity from suit implicates a "value of a high order" is the only thing "that counts when asking whether an order is 'effectively' unreviewable if review is to be left until later." *See Will*, 546 U.S. at 353 (citing *Coopers & Lybrand*, 437 U.S. at 468).

While Cardio and class members may construe their settlement as granting them immunity from trial, the district court's "denying effect to [the class] settlement agreement does not come within the narrow ambit of collateral orders." *See Dig. Equip.*, 511 U.S. at 865. In *Digital*, Desktop Direct moved to rescind a settlement agreement because of Digital's misrepresentation during negotiations. *Id.* at 866. The district court granted this motion, and Digital appealed. *Id.* The Supreme Court held that Digital's appeal could not be heard because "rights under private settlement agreements can be adequately vindicated on appeal from final judgment." *Id.* at 869. Separately, the Court also held that securing an immunity from trial, of sorts, by agreeing to a settlement "does not rise to the level of importance needed" to be appealable as a collateral order. *Id.* at 877-78.

All that can be construed in this case as securing an immunity from standing trial is the settlement agreement. *See* R. 239 (Mem. Op. and Order 239). But, first, like in *Digital*, because Cardio and class members' immunity from trial comes from their private settlement, it is not important enough to be appealable as a collateral order. *See Dig. Equip.*, 511 U.S. at

877-78. And, second, as a settlement agreement that includes only monetary payment, the rights in the settlement could be adequately vindicated on appeal from a final judgment simply by retroactive reimbursement. *See* R. 241 (Mem. Op. and Order 241). The class members who, without the settlement, will have to pay their own medical bills could be made whole if they win at trial and are simply awarded damages.

Conclusion

For the foregoing reasons, this Court should dismiss this appeal for lack of jurisdiction.

Dated: October X, 20XX

Respectfully Submitted,

/s/Rachel Schwartz
Counsel for Intervenors

Applicant Details

First Name	**Vineet**
Last Name	**Surapaneni**
Citizenship Status	**U. S. Citizen**
Email Address	**vs2717@columbia.edu**
Address	**Address** Street **380 Riverside Drive Apt 4L** City **New York** State/Territory **New York** Zip **10025** Country **United States**
Contact Phone Number	**9087874817**

Applicant Education

BA/BS From	**University of Texas-Austin**
Date of BA/BS	**May 2014**
JD/LLB From	**Columbia University School of Law** **http://www.law.columbia.edu**
Date of JD/LLB	**May 18, 2022**
Class Rank	**School does not rank**
Law Review/Journal	**Yes**
Journal(s)	**Columbia Journal of Transnational Law**
Moot Court Experience	**No**

Bar Admission

Prior Judicial Experience

Judicial Internships/ Externships	**Yes**

Post-graduate Judicial Law Clerk	**No**

Specialized Work Experience

Recommenders

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This applicant has certified that all data entered in this profile and any application documents are true and correct.

Vineet Surapaneni
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May 9, 2022

The Honorable Kenneth M. Karas
United States District Court
Southern District of New York
Charles L. Brieant, Jr. Federal Building and Courthouse
300 Quarropas Street, Room 533
White Plains, NY
10601-4150

Dear Judge Karas:

I am a third-year student and an executive editor of the *Journal of Transnational Law* at Columbia Law School. I write to apply for a clerkship in your chambers beginning in 2024.

I hope to pursue a career in prosecution and believe a district court clerkship would help me to better understand the factors that contribute to a successful prosecution. I am applying to your chambers in particular because I am interested in national security law, and I would look forward to benefitting from your experience and knowledge. As a lifelong resident of New York and New Jersey, I have always intended to live and work in New York City. At CLS, I have developed my research and writing skills as a research assistant for several professors and as a judicial extern for Judge Chin at the Second Circuit. Prior to law school, I worked for approximately four years at a three-person consultancy in Washington D.C., where I learned how to work in close quarters against tight deadlines. I would appreciate the opportunity to apply these skills in a clerkship position in your chambers.

Enclosed please find my resume, law school transcript, and writing sample. Also enclosed are letters of recommendation from Professors Waxman (292-854-0592; mwaxma@law.columbia.edu), Harcourt (212-854-1997; bharcourt@law.columbia.edu), and Genty (212-854-3250; pgenty@law.columbia.edu).

Thank you for your consideration. Please do not hesitate to contact me should you need any additional information.

Respectfully,

Vineet Surapaneni

VINEET SURAPANENI
380 Riverside Drive #4L, New York, NY 10025
(908) 787-4817 | vs2717@columbia.edu

EDUCATION

Columbia Law School, New York, NY
J.D., expected May 2022
Honors: Harlan Fiske Stone, 2019 – 2020; 2020 – 2021
Dean's Honors, Criminal Law, Spring 2020
Activities: *Columbia Journal of Transnational Law*, Executive Editor, 2021 – 2022
Research Assistant for Professor Richman, Spring 2022
Queens Domestic Violence Prosecution Externship, Fall 2021
Research Assistant for Professor Harcourt, Spring 2021
Criminal Law Teaching Assistant for Professor Harcourt, Spring 2021
Research Assistant for Professor Waxman, Fall 2020 – Spring 2021
Columbia Society of International Law, Co-President, 2020 – 2021
Second Circuit Judicial Externship, Fall 2020
Civil Procedure Teaching Assistant for Professor Genty, Fall 2020
Research Assistant for Professors Ginsburg & Louk, May – July 2020

Center for Arabic Study Abroad (CASA), Amman, Jordan
Fellow, 2014 – 2015
Awarded a fellowship to study Arabic and develop reading, writing, and listening skills.

University of Texas at Austin, Austin, TX
B.A., with honors, received May 2014
Majors: Economics; Government; Arabic Language and Literature

EXPERIENCE

Cravath, Swaine & Moore, New York, NY
Associate Starting October 2022
Summer Associate May 2021 – July 2021
Performed legal research and produced final work product in support of an internal investigation.

ACLU – National Security Project, New York, NY
Intern June 2020 – August 2020
Performed legal research in support of ongoing cases at the district and appellate levels.

Simon Everett, Ltd., Washington, DC
Senior Analyst November 2015 – June 2019
Led research and analysis for the first-ever statewide cybersecurity study for the Commonwealth of Kentucky and a similar study for a Colorado regional economic development organization. Met with companies, agencies, and stakeholders to conduct intake sessions. Conducted risk analysis and due diligence of proposals for high-tech projects in sub-Saharan Africa.

LANGUAGES: Arabic (proficient); Telugu (proficient)
INTERESTS: Rock climbing/mountaineering; running; hip-hop; any and all sci-fi

Columbia
Law School

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CLS TRANSCRIPT (Unofficial)

02/25/2022 16:56:45

Program: Juris Doctor

Vineet Surapaneni

Spring 2022

Course ID	Course Name	Instructor(s)	Points	Final Grade
L6238-1	Criminal Adjudication	Shechtman, Paul	3.0	
L6425-1	Federal Courts	Funk, Kellen Richard	4.0	
L6640-2	Journal of Transnational Law Editorial Board		1.0	
L9137-1	S. Sentencing	Richman, Daniel; Sullivan, Richard	2.0	
L6685-1	Serv-Unpaid Faculty Research Assistant	Richman, Daniel	2.0	

Total Registered Points: 12.0

Total Earned Points: 0.0

Fall 2021

Course ID	Course Name	Instructor(s)	Points	Final Grade
L6293-1	Antitrust and Trade Regulation	McCrary, Justin	3.0	A-
L6231-1	Corporations	Judge, Kathryn	4.0	A-
L6607-1	Ex. Domestic Violence Prosecution	Camillo, Jennifer; Kessler, Scott	2.0	A-
L6607-2	Ex. Domestic Violence Prosecution - Fieldwork	Camillo, Jennifer; Kessler, Scott	2.0	CR
L6640-2	Journal of Transnational Law Editorial Board		1.0	CR
L6359-1	Professional Responsibility in Criminal Law	Cross-Goldenberg, Peggy	3.0	B+

Total Registered Points: 15.0

Total Earned Points: 15.0

Spring 2021

Course ID	Course Name	Instructor(s)	Points	Final Grade
L6109-1	Criminal Investigations	Livingston, Debra A.	3.0	A-
L6241-2	Evidence	Capra, Daniel	4.0	A-
L6429-1	Federal Criminal Law	Richman, Daniel	3.0	A
L6640-1	Journal of Transnational Law		0.0	CR
L6685-1	Serv-Unpaid Faculty Research Assistant	Waxman, Matthew C.	1.0	CR
L6822-1	Teaching Fellows	Harcourt, Bernard E.	3.0	CR

Total Registered Points: 14.0

Total Earned Points: 14.0

Fall 2020

Course ID	Course Name	Instructor(s)	Points	Final Grade
L6341-1	Copyright Law	Wu, Timothy	3.0	A-
L6664-1	Ex. Federal Appellate Court	Parker, Barrington; Sack, Robert D.; Sokoler, Jennifer B.	1.0	CR
L6664-2	Ex. Federal Appellate Court - Fieldwork	Parker, Barrington; Sack, Robert D.; Sokoler, Jennifer B.	3.0	CR
L6640-1	Journal of Transnational Law		0.0	CR
L6675-1	Major Writing Credit	Waxman, Matthew C.	0.0	CR
L6680-1	Moot Court Stone Honor Competition	Richman, Daniel; Strauss, Ilene	0.0	CR
L8862-1	S. Constitutional War Powers [Minor Writing Credit - Earned]	Waxman, Matthew C.	3.0	A-
L6685-1	Serv-Unpaid Faculty Research Assistant	Waxman, Matthew C.	1.0	CR
L6683-1	Supervised Research Paper	Waxman, Matthew C.	2.0	A

Total Registered Points: 13.0

Total Earned Points: 13.0

Spring 2020

Due to the COVID-19 pandemic, mandatory Credit/Fail grading was in effect for all students for the spring 2020 semester.

Course ID	Course Name	Instructor(s)	Points	Final Grade
L6133-2	Constitutional Law	Barenberg, Mark	4.0	CR
L6108-4	Criminal Law	Harcourt, Bernard E.	3.0	CR
L6679-1	Foundation Year Moot Court	Strauss, Ilene	0.0	CR
L6121-9	Legal Practice Workshop II	Hajjar, Tanya; Moscow, Nicholas John	1.0	CR
L6169-2	Legislation and Regulation	Johnson, Olatunde C.A.	4.0	CR
L6118-2	Torts	Zipursky, Benjamin	4.0	CR

Total Registered Points: 16.0

Total Earned Points: 16.0

January 2020

Course ID	Course Name	Instructor(s)	Points	Final Grade
L6130-2	Legal Methods II: Methods of Statutory Drafting and Interpretation	Ginsburg, Jane C.; Louk, David S	1.0	CR

Total Registered Points: 1.0

Total Earned Points: 1.0

Fall 2019

Course ID	Course Name	Instructor(s)	Points	Final Grade
L6101-3	Civil Procedure	Genty, Philip M.	4.0	A-
L6105-4	Contracts	Dari-Mattiacci, Giuseppe	4.0	B
L6113-1	Legal Methods	Ginsburg, Jane C.	1.0	CR
L6115-7	Legal Practice Workshop I	Louk, David S; Whaley, Hunter	2.0	HP
L6116-1	Property	Glass, Maeve	4.0	A-

Total Registered Points: 15.0

Total Earned Points: 15.0

Total Registered JD Program Points: 86.0

Total Earned JD Program Points: 74.0

Dean's Honors

A special category of recognition in Spring 2020 awarded to the most outstanding students in each course (top 3-5%).

Semester	Course ID	Course Name
Spring 2020	L6108-4	Criminal Law

Honors and Prizes

Academic Year	Honor / Prize	Award Class
2020-21	Harlan Fiske Stone	2L
2019-20	Harlan Fiske Stone	1L

Pro Bono Work

Type	Hours
Mandatory	40.0
Voluntary	18.0

Columbia
Law School

Philip M. Genty
Vice Dean for Experiential Education
Everett B. Birch Clinical Professor
in Professional Responsibility

435 West 116th Street
New York, NY 10027
T 212 854 3250 F 212 854 3554
pgenty@law.columbia.edu

Re: Vineet Surapaneni

Dear Judge:

I am writing to offer an enthusiastic clerkship recommendation for Vineet Surapaneni, a third year student at Columbia. Mr. Surapaneni was enrolled in my Fall 2019 Civil Procedure course. Out of a class of 90 students, he stood out from the very beginning. He spoke regularly in class, and his comments were consistently intelligent and focused. In the classroom and in our office meetings he showed a level of preparation and seriousness of purpose that impressed me throughout the semester. His diligence and depth of understanding earned him an A- for the course, one of the few A range grades I was permitted to give under our strict first year curve.

Mr. Surapaneni's academic accomplishments have extended beyond my course. In his first year, he received a High Pass in the Legal Practice Workshop, our required lawyering and writing skills course. The course is graded Pass-Fail, but a handful of students in each section receive a High Pass for exceptional achievement. He was also given Dean's Honors for his Criminal Law course. In addition, in his first two years he has received an A or A- in all but one of his graded courses. As a result, he was designated a Harlan Fiske Stone Scholar in both years. Finally, his outstanding writing and research skills earned him membership on the *Columbia Journal of Transnational Law*, and he is serving as Executive Editor in his third year.

Because of Mr. Surapaneni's excellent work in my course in his first year, I asked him to serve as one of my teaching fellows for the Fall 2020 semester. I was gratified when he accepted my offer. He was, as expected, a wonderful resource for the class. Several of the students made a point of telling me how helpful he had been to them.

I should also note that like many things, Mr. Surapaneni's work as a teaching fellow was made much more complicated by the pandemic. I taught my fall course in a "hybrid" format in which one-third of the students were in-person on a rotating basis, and the other two-thirds were online. This required Mr. Surapaneni to perform technical duties for the course, in addition to his other responsibilities.

Mr. Surapaneni has also somehow found time for involvement in significant law school activities. He has been a research fellow or a teaching fellow for several of my colleagues. In addition, he has served as the Co-President of the Columbia Society of International Law and the Treasurer of the National Security Law Society.

Mr. Surapaneni has a fascinating background. He is a first generation American, born to Indian immigrants. Prior to law school he worked for four years as an analyst on cybersecurity issues, and he

came to law school with the goal of eventually entering government service. When I met with him in my office at the beginning of his first year, I was impressed with his maturity and well-formed objectives for law school and his career.

Mr. Surapaneni sees a clerkship as an ideal way to enter public service and begin working toward achieving his long-term career goals. He took a first step in this direction in the fall semester of his second year, when he had a judicial externship in the Second Circuit.

I believe that Mr. Surapaneni is extremely well-suited for a clerkship. He is intellectually curious and loves delving deeply into legal issues and engaging with colleagues in analytic discussions. I am certain that you would find him to be a valuable member of your chambers, and I am delighted to recommend him to you.

Please contact me if you need additional information.

Sincerely yours,

Philip M. Genty
Vice Dean for Experiential Education
Everett B. Birch Clinical Professor
in Professional Responsibility
212-854-3250
pgenty@law.columbia.edu

COLUMBIA UNIVERSITY
IN THE CITY OF NEW YORK

Bernard E. Harcourt *212.854.1997*
Isidor and Seville Sulzbacher Professor of Law and Professor of Political Science *beh2139@columbia.edu*
Founding Director of the Columbia Center for Contemporary Critical Thought

May 3, 2021

Re. Letter of Recommendation on behalf of Vineet Surapaneni

Dear Judge,

It is with the greatest enthusiasm that I write this letter of recommendation on behalf of a brilliant law student, Vineet Surapaneni, who is applying to clerk in your chambers. Mr. Surapaneni is a stand-out student, head and shoulders above his peers. He is brilliant at research, writes beautifully and seamlessly, and is incredibly responsive, thorough, punctual, and professional, while also being at the same time charming. I could not recommend him more highly.

I met Mr. Surapaneni when he took my Criminal Law class in his 1L year. He was truly spectacular as a student—always the most prepared, always the one student I could count on when I needed a productive response, while always being sensitive to his student peers. For his truly outstanding participation in class and his stellar final exam, I was happy to award him the Dean's Honors.

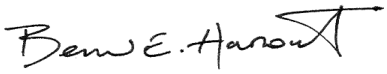
Given his superb performance in Criminal Law, I invited him and was thrilled to bring him on as a Teaching Assistant for Criminal Law this year. Here too he has been fantastic and he has impressed me further with his leadership abilities, his organization, and the way he has worked well with the four-person TA team to make sure first year criminal law students are supported and instructed.

Also, given his strengths, I hired Mr. Surapaneni as my research assistant, and he has excelled there too. He is an excellent researcher, writer, and collaborator—all traits that would make him an excellent clerk.

As my TA, RA, and student, I can say, without any hesitation, that Mr. Surapaneni is one of the best and brightest young persons I have taught in my career.

I offer my strongest recommendation of Vineet Surapaneni. I am thrilled he is applying for a clerkship and look forward to seeing him thrive as he continues his studies. Please do not hesitate to call me if you have any questions.

Sincerely yours,



Bernard E. Harcourt

May 09, 2022

The Honorable Kenneth Karas
Charles L. Brieant, Jr. United States Courthouse
300 Quarropas Street, Room 533
White Plains, NY 10601-4150

Dear Judge Karas:

I strongly recommend Vineet Surapaneni for a clerkship in your chambers. He is a superb student and research assistant and a great pleasure to work with.

Vineet was a student in my Fall 2020 Constitutional War Powers seminar. That intensive-writing seminar required students to research and compose a series of memos on constitutional questions, so I had a chance to review a lot of his work. Each of his products—I recall especially his excellent memos on WWI wartime prohibition statutes and the Senate's National Commitment Resolution during the Vietnam War—were diligently researched, well-argued, and clearly and succinctly written. I know that Vineet was drawn to that seminar because of his interest in the interplay between national security policy and civil liberties (hence his internship with the ACLUS's National Security Project), and I greatly enjoyed discussing those issues with him. He is extremely thoughtful, never quick to rush to judgment on tough questions, and has a keen legal mind.

Indeed, I was so impressed with Vineet's intellect and analytical skills that I asked him to serve as my research assistant while he was still just a 1L, having met him before he was a student in my seminar. I also eagerly agreed to serve as the faculty adviser on his student Note about the due process defects of a DHS regulation that permits the indefinite detention of aliens that allegedly pose a threat to national security. That extensive paper, like his seminar memos, is an excellent piece of legal research and writing.

Vineet is a leader in the Columbia Law School community. He was named a Harlan Fiske Stone Scholar on account of his overall academic achievement. He also received Dean's Honors (denot-ing the top 3-5% in each class) in Criminal Law, and he has served as a teaching assistant in both a 1L Civil Procedure class and a Criminal Law class. Vineet was the only 2L accepted into the Fall 2020 Second Circuit Externship. Vineet has also served as co-president of the Columbia Society for International Law and treasurer of the National Security Law Society.

Besides these academic qualifications, Vineet has remarkable professional maturity and poise. He came to law school 5 years after graduating from UT Austin, with a strong desire to have a concrete professional impact in public service. He has talked about his desire to serve in a U.S. attorney's office, and I have no doubt that he would be a superb government litigator.

I highly recommend this outstanding candidate.

Sincerely,

Matthew Waxman
Liviu Librescu Professor of Law
Faculty chair of the National Security Law Program

Matthew Waxman - mwaxma@law.columbia.edu - 212-854-0592

VINEET SURAPANENI
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WRITING SAMPLE

The writing sample below is a draft bench memo I wrote during my Second Circuit externship in Fall 2020. It is the result of legal research and my reading of the record and does not include comments or feedback. I have removed identifying information and citations to the record. The case asks whether attempted Hobbs Act robbery is categorically a crime of violence—I suggest that it is not.

John Doe v. United States

OVERVIEW

Defendant-Appellant ("Defendant") appeals from a district court order denying his petition for *habeas corpus*. The district court held that Defendant's allocution at his plea hearing that he used a firearm during an attempted Hobbs Act robbery was sufficient to establish attempted Hobbs Act robbery as a predicate to a Section 924(c) conviction. The district court also held that attempted Hobbs Act robbery is a crime of violence under Section 924(c).

The district court did not err in holding that Defendant's Section 924(c) conviction could be predicated on attempted Hobbs Act robbery. Due, however, to the fact that attempted Hobbs Act robbery is not a crime of violence, this court should **REVERSE** and **VACATE** Defendant' Section 924(c) conviction.

QUESTIONS PRESENTED

I. Did the lower court err in determining that Defendant's Section 924(c) conviction was predicated on conspiracy and attempted Hobbs Act robbery? *No.*

II. Did the lower court err in determining that an attempt to commit a Hobbs Act robbery constituted a "crime of violence"? *Yes.*

BACKGROUND

I. Factual Background

Between July and December 2007, Defendant, and "others known and unknown," attempted and committed multiple robberies against individuals and businesses. On or about July 14, 2007, Defendant and other co-conspirators not named committed an attempted armed robbery of a suspected drug dealer at an apartment in Yonkers, New York. Defendant and others restrained a male victim, searched the apartment for narcotics and money, and Defendant raped a female victim.

II. Procedural History

In September 2010, Defendant was charged in a three-count Information with conspiracy to commit Hobbs Act robbery (Count One), attempted Hobbs Act robbery (Count Two), and violating 19 U.S.C. § 924(c) by using a firearm in furtherance of a crime of violence (Count Three). Count Three charged Defendant with using a firearm in relation to Counts Two and Three. Defendant' plea agreement described Count Three as "the use of firearms 'in connection with the robbery conspiracy charged in Count One.'" At Defendant' plea allocution, the government described Count Three as laid out in the Information -- only as it related to the Count One conspiracy. Ultimately, Defendant pleaded guilty to all three counts and was

sentenced to 135 months on Counts One and Two (which would be served partially concurrently with an ongoing state sentence of 24 months) and 84 months on Count 3.

In June 2016, Defendant moved under 28 U.S.C. § 2255 to vacate his conviction. Defendant' case was stayed until the Second Circuit's decision in *United States v. Barrett*, 937 F.3d 126, 127 (2d Cir. 2019), where it held that Hobbs Act robbery conspiracy was not a crime of violence under Section 924(c).

In November 2019, the Southern District of NY issued an order denying Defendant's habeas petition. The judge held that, as related to Count Three, Defendant had also allocuted to Count Two for attempted Hobbs Act robbery. The district court thus concluded that Defendant's Count Three conviction under Section 924(c) rested upon both a conspiracy to commit and attempted Hobbs Act robbery and that Defendant had confessed to using a firearm in the course of an attempted robbery. The district court held that, while *Barrett* had removed conspiracy as a grounds for the Section 924(c) conviction, attempted Hobbs Act robbery is a crime of violence, and so served as the predicate offense to Defendant' conviction under Section 924(c). It also held that neither the plea agreement nor the government's explanation of Count Three at the plea hearing narrowed the definition of Count Three as provided by the Information.

This appeal followed.

DISCUSSION

I. Did the lower court err in determining that Defendant's Section 924(c) conviction was predicated on conspiracy and attempted Hobbs Act robbery? ***No***.

A. Standard of Review

The Second Circuit reviews interpretations of plea agreements *de novo*. *United States v. Wilson*, 920 F.3d 155, 162 (2d Cir. 2019) (quoting *United States v. Riera*, 298 F.3d 128, 133 (2d Cir. 2002)). In instances, however, where the defendant does not object "in a manner sufficient to apprise the court and opposing counsel of the nature of [his] claims regarding the impropriety of the Government's case in position," the court reviews for clear error. *United States v. Taylor*, 961 F.3d 68, 81 n.12 (2d Cir. 2020) (quoting *Wilson*, 920 F.3d at 162). Finally, the court "review[s] *de novo* a district court's denial of a 28 U.S.C. § 2255 petition. *Kaminski v. United States*, 339 F.3d 84, 86 (2d Cir. 2003).

B. Applicable Law

Because plea agreements "require defendants to waive fundamental constitutional rights, prosecutors are held to meticulous standards of performance" and the agreements are construed "strictly against the government." *Wilson*, 920 F.3d at 162 (internal citations omitted). The court reviews plea agreements "in accordance with principles of contract law," and looks to "what the parties reasonably understood to be the terms of the agreement." *Taylor*, 961 F.3d at 81 (quoting *United States v. Vaval*, 404 F.3d 144, 152 (2d Cir. 2005)).

A Section 924(c) conviction "does not require the defendant to be convicted of (or even charged with) the predicate crime, so long as there is legally sufficient proof that the predicate crime was, in fact, committed." *Johnson v. United States*, 779 F.3d 125, 129 (2d Cir. 2015).[1]

C. Application

At his plea allocution, Defendant admitted to using a firearm during at least one attempted Hobbs Act robbery. Despite the plea agreement's reference to only conspiracy as a predicate for his Section 924(c) conviction, Defendant's admission at his plea hearing constitutes legally sufficient proof that the now predicate crime of attempted Hobbs Act robbery was committed. In other words, Defendant's admission of committing attempted Hobbs Act robbery with a firearm is sufficient to sustain his Section 924(c) conviction, as long as the attempted Hobbs Act robbery is a "crime of violence" for purposes of Section 924(c). We address this next.

II. Did the lower court err in determining that an attempt to commit a Hobbs Act robbery constituted a "crime of violence"? *Yes.*

A. Standard of Review

The Second Circuit reviews *de novo* a district court's statutory interpretation and its analysis pursuant to the categorical approach. *United States v. Thompson*, 961 F.3d 545, 549 (2d Cir. 2020).

B. Applicable Law

i. Crime of Violence

18 U.S.C. § 924(c) provides mandatory minimum sentences for the use of a firearm in relation to a crime of violence.[2] A crime of violence is a felony that "has as an

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[1] In *United States v. Figueroa*, defendant-appellant Figueroa appealed from a conviction under Section 924(c) for using a firearm in the course of conspiracy to commit Hobbs Act Robbery. *United States v. Figueroa*, 813 F. App'x 716, 717 (2d Cir. 2020) (summary order). Figueroa challenged his conviction on the ground that the Supreme Court's decision in *United States v. Davis*, 139 S. Ct. 2319 (2019), and the Second Circuit's decision in *United States v. Barrett*, 937 F.3d 126 (2d Cir. 2019), both held that conspiracy to commit Hobbs Act robbery is not a crime of violence as under Section 924(c). *Figueroa*, 813 F. App'x at 717.

Figueroa was charged with conspiracy to commit Hobbs Act robbery (Count One), narcotics offenses (Counts Two and Three), and violating Section 924(c) during the course of events in Counts One through Three (Count 4). *Id.* Figueora pled guilty to Count One and Four and the government dismissed Counts Two and Three. *Id.* at 718. At his plea allocution, Figueroa had admitted that the purpose of his robbery in Count One and firearm offense in Count Four was to obtain narcotics for distribution. *Id.* The Second Circuit affirmed the district court's judgment that, despite the impact of *Davis* and *Barrett*, Figueroa's Section 924(c) conviction could stand on Count Four. *Id.* at 720-21. The court held that Figueroa's plea allocution contained legally sufficient proof of the crime initially charged as Count Three which rendered his conviction under Count Four valid, despite the fact that Count One could no longer remain a valid predicate for a Section 924(c) violation.

[2] Any individual "who, during and in relation to any crime of violence . . . uses or carries a firearm, or who, in furtherance of any such crime, possesses a firearm" faces a mandatory minimum sentence of 5 years. 18 U.S.C. §

element the use, attempted use, or threatened use of physical force against the person or property of another." 18 U.S.C. § 924(c)(3)(A) (hereinafter the "force clause," also known as the "elements clause"). The Second Circuit has held that a completed Hobbs Act robbery is a crime of violence under the force clause. *United States v. Hill*, 890 F.3d 51, 60 (2d Cir. 2018).

ii. Hobbs Act Robbery

The Hobbs Act provides that

> Whoever in any way or degree obstructs, delays, or affects commerce or the movement of any article or commodity in commerce, by robbery or extortion or attempts or conspires so to do, or commits or threatens physical violence to any person or property in furtherance of a plan or purpose to do anything in violation of this section shall be fined under this title or imprisoned not more than twenty years, or both.

18 U.S.C. § 1951(a). Robbery is "the unlawful taking or obtaining of personal property from the person . . . against his will, by means of actual or threatened force, or violence, or fear of injury." 18 U.S.C. § 1951(b)(1).

In *United States v. Davis*, 139 S. Ct. 2319, 2336 (2019), the Supreme Court held that the alternative definition of a crime of violence, known as the residual clause, was unconstitutionally vague.[3] Because the Court held the residual clause unconstitutionally vague and conspiracy does not qualify as a crime of violence under the force clause, conspiracy to commit a Hobbs Act robbery is not a crime of violence. *Id.* at 2324, 2336; *see also Barrett*, 937 F.3d at 127 ("*Davis* precludes us from concluding . . . Hobbs Act robbery conspiracy crime qualifies as a §924(c) crime of violence."). To constitute a crime of violence, therefore, an offense must satisfy the force clause.

"To determine whether an offense is a crime of violence, courts employ . . . the categorical approach." *United States v. Hill*, 890 F.3d 51, 55 (2d Cir. 2018) (quoting *Taylor v. United States*, 495 U.S. 575, 600 (1990)). The categorical approach requires that "courts identify the minimum criminal conduct necessary for conviction under a particular statute" and "look only to the statutory definitions . . . and *not* to the particular underlying facts." *Hill*, 890 F.3d at 55 (cleaned up, citations omitted). Finally, to show that an offense is not a crime of violence, "there must be a realistic probability, not a theoretical possibility, that the statute at issue could be applied to conduct that does not constitute a crime of violence" and the defendant "must at least point to his own case or other cases in which the courts in fact did apply the statute in the manner for which he argues." *Id.* at 56 (quoting *Gonzales v. Duenas-Alvarez*, 549 U.S. 183, 193 (2007)).

924(c)(1)(A). The minimum sentence increases to 7 years if the firearm is brandished and to 10 years if the firearm is discharged. 18 U.S.C. § 924(c)(1)(A)(ii-iii).

[3] The residuals clause states that a crime of violence is a felony "that by its nature, involves a substantial risk that physical force against the person or property of another may be used in the course of committing the offense." 19 U.S.C. § 924(c)(3)(B).

iii. Attempt

Attempt "requires proof that a defendant (a) had the intent to commit the object crime and (b) engaged in conduct amounting to a substantial step towards its commission." *United States v. Farhane*, 634 F.3d 127, 145 (2d Cir. 2011). "For a defendant to have taken a substantial step, he must have engaged in more than mere preparation, but may have stopped short of the last act necessary for the actual commission of a substantive crime." *United States v. Anderson*, 747 F.3d 51, 74-75 (2d Cir. 2014) (quoting *United States v. Celaj*, 649 F.3d 162, 171 (2d Cir. 2011)). "[I]n order for behavior to be punishable as an attempt, . . . it must be necessary to the consummation of the crime and be of such a nature that a reasonable observer, viewing it in context could conclude beyond a reasonable doubt that it was undertaken in accordance with a design to violate the statute." *United States v. Pugh*, 937 F.3d 108, 119 (2d Cir. 2019) (quoting *United States v. Manley*, 632 F.2d 978, 987-88 (2d Cir. 1980)).

The Second Circuit has adopted the Model Penal Code's (MPC) definition of attempt.[4] MPC § 5.01(2) provides that certain conduct, "if strongly corroborative of the actor's criminal purpose," can constitute a substantial step:

> (a) lying in wait, searching for or following the contemplated victim of the crime;
> (b) enticing or seeking to entice the contemplated victim of the crime to go to the place contemplated for its commission;
> (c) reconnoitering the place contemplated for the commission of the crime;
> (d) unlawful entry of a structure, vehicle or enclosure in which it is contemplated that the crime will be committed;
> (e) possession of materials to be employed in the commission of the crime, that are specially designed for such unlawful use or that can serve no lawful purpose of the actor under the circumstances;
> (f) possession, collection or fabrication of materials to be employed in the commission of the crime, at or near the place contemplated for its commission, if such possession, collection or fabrication serves no lawful purpose of the actor under the circumstances;
> (g) soliciting an innocent agent to engage in conduct constituting an element of the crime.

iv. Recent Caselaw and Divergent Analyses

The Second Circuit has upheld convictions based on attempted Hobbs Act robberies in which there was no use, threatened use, or attempted use of force.[5] The Second

[4] For Second Circuit cases adopting the MPC definition of attempt, see *United States v. Crowley*, 318 F.3d 401, 408 (2d Cir. 2003); *United States v. Manley*, 632 F.2d 978, 987 (2d Cir. 1980); *United States v. Jackson*, 560 F.2d 112, 117-18 (2d Cir. 1977).

[5] *See, e.g., United States v. Gonzalez*, 441 F. App'x 31, 36-37 (2d Cir. 2011) (summary order) (upheld attempted Hobbs Act robbery conviction based on "[d]efendants' reconnoitering at the scene of the contemplated crime while

Circuit upheld defendants' conviction for attempted robbery as evidence showed that they had "reconnoitered the place contemplated . . . and possessed the paraphernalia to be employed in the commission of the crime." *United States v. Jackson*, 560 F.2d 112, 120 (2d Cir. 1977). The court held that "either type of conduct, standing alone, was sufficient as a matter of law to constitute a 'substantial step' if it strongly corroborated their criminal purpose." *Id.* In *Jackson*, attempt was found even though the defendants had not actually used, threatened to use, or attempted to use physical force. The categorical minimum criminal conduct for attempt, then, *does not require* that the individual use force in order to be convicted for the same.

District court judges within the Second Circuit have considered whether attempted Hobbs Act robbery is a crime of violence, and there is no strong consensus. Arguments for[6] and against[7] classifying attempted Hobbs Act robbery as a crime of violence can be split between the "absolute rule analysis" and the categorical approach.

1. Absolute Rule Analysis

The absolute rule analysis suggests that the statutory language of 18 U.S.C. § 924(c) compels holding attempt as a crime of violence.[8] In *Savoca v. United States*, the district court determined that "the 'attempted use' prong of [the force clause] covers any offense that has an element a substantial step toward using physical force coupled with an intent to use such force." *Savoca v. United States*, No. 03-CR-841-01-VB, 2020 WL 2133187, at *7 (S.D.N.Y. May 5, 2020). Therefore, "any person who has committed attempted Hobbs Act robbery has taken concrete, directed action with the intent that a robbery take place; as such, he has taken a substantial step toward using force, as robbery requires." *Id.*

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in possession of paraphernalia which, under the circumstances, could serve no lawful purpose[,]including a real firearm . . . .").

[6] For courts holding attempt is a crime of violence, see *United States v. Samuels*, No. 18-CR-306-ER, 2020 WL 5517772 (S.D.N.Y. Sept. 14, 2020); *Savoca v. United States*, No. 03-CR-841-01-VB, 2020 WL 2133187 (S.D.N.Y. May 5, 2020); *Crowder v. United States*, No. 05-CR-67-02-CM, 2019 WL 6170417 (S.D.N.Y. Nov. 20, 2019); *United States v. Robinson*, No. 16-CR-545 (S-R)(ADS), 2019 WL 5864135 (E.D.N.Y. Nov. 8, 2019); *United States v. Jefferys*, No. 18-CR-359-KAM, 2019 WL 5103822 (E.D.N.Y. Oct. 11, 2019).

[7] For courts holding attempt is not a crime of violence, see *FNU LNU v. United States*, No. 16-CV-4499-LTS, 2020 WL 5237798 (S.D.N.Y. Sept. 2, 2020) ; *United States v. Culbert*, 453 F.Supp.3d 595 (E.D.N.Y. Apr. 13, 2020); *United States v. Pica*, No. 8-cr-559-CBA (E.D.N.Y. Mar. 17, 2020); *United States v. Cheese*, No. 18-cr-33, 2020 WL 705217 (E.D.N.Y. Feb. 12, 2020); *Lofton v. United States*, No. 6:04-cr-0603-MAT-MWP, 2020 WL 362348 (W.D.N.Y. Jan. 22, 2020); *United States v, Tucker*, No. 18-CR-01119-SJ, 2020 WL 93951 (E.D.N.Y. Jan. 8, 2020).

[8] District courts holding that attempt is, in fact, a crime of violence cite *United States v. St. Hubert*, 909 F.3d 335, 351 (11th Cir. 2019) ("*St. Hubert I*") approvingly, which holds that attempted Hobbs Act robbery is a crime of violence because the force clause expressly includes attempted use of force. The Eleventh Circuit held that

> because the taking of property from a person against his will in the forcible manner required by § 1951(b)(1) necessarily includes the use, attempted use, or threatened use of physical force, then by extension the attempted taking of such property from a person in the same forcible manner must also include at least the "attempted use" of force.

Id. The Eleventh Circuit adopted the Seventh Circuit's reasoning in *Hill v. United States,* 877 F.3d 717, 719 (7th Cir. 2017), that "[w]hen the intent element of the attempt offense includes the intent to commit violence against the person of another, . . . it makes sense to say that the attempt crime itself includes violence as an element." The Eleventh Circuit denied a rehearing *en banc*, from which several judges dissented. *United States v. Hubert*, 918 F.3d 1174 (11th Cir. 2019). District courts in the Second Circuit that held that attempt is *not* a crime of violence have cited the dissent from the denial to rehear *St. Hubert I en banc*. *United States v. Herbert*, 918 F.3d 1174, 1197-1213 (11th Cir. 2019) ("*St. Hubert II*"). *See, e.g., Tucker*, 2020 WL 93951, at *6; *Lofton*, 2020 WL 362348, at *6.

The absolute rule analysis also posits that "where a substantive offense is a crime of violence under § 924(c), an attempt to commit that offense similarly qualifies under the elements cause." *United States v. Jefferys*, No. 18-CR-359-KAM, 2019 WL 5103822, at *7 (E.D.N.Y. Oct. 11, 2019). This analysis takes after the Eleventh Circuit's decision in *St. Hubert*, which concluded that because "an attempt to commit a crime should be treated as an attempt to commit every element of that crime," then an attempt to commit "a substantive offense [that] qualifies as a violent felony under [the force clause] . . . is a violent felony." *United States v. St. Hubert*, 909 F.3d 335, 352 (11th Cir. 2019) ("*St. Hubert I*").[9] While the district court in *Jefferys* claimed that "[t]his is in line with precedent around the country," its citations do not specifically address the Hobbs Act. *Jefferys*, 2019 WL 5103822, at *7.[10]

2. Categorical Approach

In Lofton, the district court criticized *Jefferys* for not properly applying the categorical approach, reasoning that "an absolute rule (i.e. that an attempt to commit any violent crime will necessarily be itself a violent crime) seems at odds with the requirements of the categorical analysis in which a court must examine 'the minimum criminal conduct necessary for conviction under a particular statute.'" *Lofton v. United States*, No. 6:04-cr-0603-MAT-MWP, 2020 WL 362348, at *7 (W.D.N.Y. Jan. 22, 2020) (quoting *United States v, Tucker*, No. 18-CR-01119-SJ, 2020 WL 93951, at *6 (E.D.N.Y. Jan. 8, 2020)); *see also United States v. Culbert*, 453 F.Supp.3d 595, 600 (E.D.N.Y. Apr. 13, 2020) ("Although a satisfying syllogism on some level, this argument 'collapses the distinction between acts constituting an underlying offense and acts constituting an attempt of the underlying offense, which does not square with the Supreme Court's decision in Davis.'") (quoting *United States v. Cheese*, No. 18-cr-33, 2020 WL 705217, at *3 (E.D.N.Y. Feb. 12, 2020)). The district court in *Lofton* held that, because there is "much more than a realistic probability that attempted Hobbs Act robbery could be applied to conduct that does not constitute a crime of violence under [the force clause]," "attempted Hobbs Act robbery does not categorically entail the use, threatened use, or attempted use of force." *Lofton*, 2020 WL 362348, at *9.

In *Culbert*, the district court concluded that while "there can be no serious doubt that Hobbs Act attempt has a higher likelihood of being violent than [conspiracy]," Hobbs Act attempt is not categorically violent. 453 F.Supp.3d at 598. The *Culbert* court looked to MPC §

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[9] For a discussion of *St. Hubert I* and *II* and its use by district courts, see *Lofton v. United States*, No. 6:04-cr-0603-MAT-MWP, 2020 WL 362348, at *6-*7 (W.D.N.Y. Jan. 22, 2020); *see also supra* note 8.

[10] This assertion relies on the following Second Circuit decisions:

> *See, e.g., United States v. Scott*, 681 F. App'x 89, 95 (2d Cir. 2017) ("Attempted murder in the second degree is a crime unmistakably involving 'an attempted use ... of physical force' within § 924(c)(3)(A)." (ellipses in original)); s*ee also, e.g., Leyones v. United States*, No. 10-CR-743(ARR), 2018 WL 1033245, at *4 (E.D.N.Y. Feb. 22, 2018) (rejecting a substantially similar argument from a defendant and finding that attempted bank robbery under 18 U.S.C. § 2113 constitutes a crime of violence under the elements clause); *United States v. Walker*, 442 F.3d 787, 788 (2d Cir. 2006) (holding that attempted New York assault is a "violent felony" under the Armed Career Criminal Act).

Jefferys, 2019 WL 5103822, at *7. The court's claim that this assertion is accepted throughout the country cites two cases: *Hill v. United States*, 877 F.3d 717, 718-19 (7th Cir. 2017) (concerning the Armed Career Criminal Act) and *Arellano Hernandez v. Lynch*, 831 F.3d 1127, 1132 (9th Cir. 2016) (concerning California state criminal law).

5.01(2) and found that, while the MPC is only persuasive authority, its guidance as to what constitutes a substantial step "do not necessarily -- or even commonly -- involve force or violence or fear of injury." *Id.* at 599.

C. Application

Attempted Hobbs Act robbery is not a categorical crime of violence. Categorical attempt includes many plausible and likely scenarios under which a conviction of attempted Hobbs Act robbery can occur and in which there is no use, threatened use, or attempted use of force. In *Jackson*, two defendants were found guilty of attempt upon reconnoitering a potential robbery target and possessing associated paraphernalia. *Jackson*, 560 F.2d at 120-21. At no point did the defendants, use, attempt to use, or threaten to use physical force.

The absolute rule analysis supplants the categorical approach with the blanket claim that an attempt offense is a crime of violence if the related substantive offense is a crime of violence -- "even if the completed substantial step falls short of actual or threatened force, the robber has attempted to use actual or threatened force because he has attempted to commit a crime that would be violent if completed." *Savoca*, 2020 WL 2133187, at *8 (quoting *St. Hubert I*, 909 F.3d at 353) (emphasis in original).

Courts adopting the absolute rule analysis ignore that, while the categorical approach requires that courts look only to the statutory definitions, they must still apply the categorical approach to the attempt and the force clause. When applied to attempted Hobbs Act robbery, the categorical approach demonstrates that the minimum conduct does not necessarily involve the use of force -- for example, an individual can be found guilty of attempted Hobbs Act robbery if they (a) intended to commit Hobbs Act robbery and (b) took the substantial step of reconnoitering the target of the robbery, *see* MPC § 5.01(2)(c).[11] Because categorical attempt does not necessarily involve the use, attempted use, or threatened use of force, it cannot satisfy Section 924(c)'s force clause.

In the instant case, the district court held that, while the conspiracy conviction was no longer a valid predicate for the Section 924(c) conviction following the Second Circuit's decision in *Barrett*, the Defendant's conviction could be sustained if attempted Hobbs Act robbery was a crime of violence. The district court explicitly adopted the *Jefferys* holding and concluded that because Section 924(c)'s text "expressly includes 'attempted use' of force in its definition," taking a substantial step to completion of a robbery "categorically involves the attempted or threatened use of force." The court also argued that the Second Circuit "ha[s] found that attempts to commit crimes of violence are themselves crimes of violence." The court cites *United States v. Pereira-Gomez*, 903 F.3d 155, 166 (2d Cir. 2018), as supporting this proposition, but ignores that *Pereira-Gomez* concerned New York attempt, which must be "so near to its accomplishment that in all reasonable probability the crime itself would have been committed, but for timely interference." *Id.* (quoting *People v. Mahboubian*, 74 N.Y. 2d 174,

[11] "We can easily imagine that a person may engage in an overt act -- in the case of robbery, for example, overt acts might include renting a getaway van, parking the van a block from the bank, and approaching the bank's door before being thwarted -- without having used, attempted to use, or threatened to use force." *St. Hubert II*, 918 F.3d at 1212 (Preska, J., dissenting from denial of rehearing *en banc*).

196 (1989). *Pereira-Gomez* fails to support the court's reasoning because the New York attempt is more stringent than the Second Circuit's substantial step test. *United States v. Thrower*, 914 F.3d 770, 777 (2d Cir. 2019) (quoting *People v. Acosta*, 80 N.Y.2d 665, 670 (1993).

Accordingly, the Defendant's conviction under Count Three cannot be sustained -- neither conspiracy nor attempt are sufficient to convict under Section 924(c). This court, therefore, should **REVERSE** the district court's judgment and **VACATE** the Defendant's conviction under Count Three.

Applicant Details

First Name	**David**
Last Name	**Tannenbaum**
Citizenship Status	**U. S. Citizen**
Email Address	**drt57@georgetown.edu**
Address	**Address** **Street** **61 Pierce St NE Apt 1242** **City** **Washington DC** **State/Territory** **District of Columbia** **Zip** **20002** **Country** **United States**
Contact Phone Number	**7038886398**

Applicant Education

BA/BS From	**University of Michigan-Ann Arbor**
Date of BA/BS	**December 2015**
JD/LLB From	**Georgetown University Law Center** **https://www.nalplawschools.org/employer_profile?FormID=961**
Date of JD/LLB	**May 20, 2022**
Class Rank	**School does not rank**
Law Review/Journal	**Yes**
Journal(s)	**American Criminal Law Review**
Moot Court Experience	**No**

Bar Admission

Prior Judicial Experience

Judicial Internships/ Externships	**Yes**
Post-graduate Judicial Law Clerk	**No**

Specialized Work Experience

Recommenders

Gornstein, Irv
ilg@law.georgetown.edu
DeLaurentis, Frances
fcd@law.georgetown.edu
Boynton, Kyle
Kyle.Boynton@usdoj.gov

This applicant has certified that all data entered in this profile and any application documents are true and correct.

David Tannenbaum
61 Pierce Street NE, Washington, D.C. 20002
(703) 888-6398 | drt57@georgetown.edu

May 9, 2022

The Honorable Kenneth M. Karas
United States District Court for the Southern District of New York
Charles L. Brieant, Jr. United States Courthouse
300 Quarropas Street, Room 533
White Plains, New York

Dear Judge Karas:

I am a third-year student at Georgetown University Law Center, and I am writing to offer my application for a 2024 term clerkship in your chambers. I am especially eager to clerk for you because of your background in prosecution. I would be honored to not only learn from you in your capacity as a judge but also as a former prosecutor. My internships with the U.S. Attorney's Office for the District of New Jersey and with the Criminal Section of the U.S. Department of Justice's Civil Rights Division solidified my interest in pursuing a career as a prosecutor.

I am confident that my grit, attention to detail, and ability to multitask will allow me to contribute to the work of your chambers. I relied on my grit, a combination of hard work and resilience, while interning with the U.S. Attorney's Office for the District of New Jersey when I successfully argued the Government's position in an evidentiary hearing regarding a petitioner's habeas motion. Hard work and a willingness to labor beyond the set hours of the internship were essential to my preparation for the hearing, which included witness interviews, drafting direct and cross examination outlines, and researching the law and facts of the case.

My attention to detail was essential to my work as a judicial extern in the chambers of the Honorable Reggie B. Walton, U.S. District Court for the District of Columbia. I was tasked with drafting a bench memo for a Title VII case that presented several legal issues. My ability to research and analyze the case efficiently, clearly identify the relevant facts and controlling law, and present my findings succinctly and accurately allowed me to succeed on this assignment.

Finally, my representation of a client seeking asylum in the United States through the Center for Applied Legal Studies Clinic at Georgetown honed my ability to multitask. My partner and I were responsible for managing all aspects of our client's case. As part of our representation, we conducted regular client meetings, drafted client and witness declarations, identified and compiled country condition reports, and prepared legal documents such as a legal brief for the case. My ability to stay organized and work on multiple tasks concurrently was essential to preparing a strong case for our client.

I have enclosed my resume, law school transcript, writing sample, and recommendation letters in this packet. Thank you for your consideration.

Respectfully,
David Tannenbaum

DAVID TANNENBAUM

61 Pierce Street NE, Washington, DC 20002 • (703) 888-6398 • drt57@georgetown.edu

EDUCATION

GEORGETOWN UNIVERSITY LAW CENTER — **Washington, DC**
Juris Doctor — **Expected May 2022**
GPA: 3.84
Journal: *American Criminal Law Review*, Executive Editor
Honors: Dean's List Spring 2021, Fall 2020; Law Fellow; CALI Award for Justice & Accountability Class Paper
Clinic: Center for Applied Legal Studies (Fall 2021)
Activities: American Constitution Society, Senior Advisor; Home Court; Jewish Law Students Association

UNIVERSITY OF MICHIGAN — **Ann Arbor, MI**
Bachelor of Arts, *with Distinction*, Public Policy — **December 2015**
GPA: 3.84
Honors: Phi Beta Kappa

EXPERIENCE

HUGHES HUBBARD & REED LLP — **Washington, DC**
Associate — **Expected Fall 2022**

UNITED STATES ATTORNEY'S OFFICE, DISTRICT OF NEW JERSEY — **Camden, NJ**
Legal Intern — **June 2021 – July 2021**

- Conducted direct- and cross-examination in an evidentiary hearing for a § 2255 motion to vacate, successfully argued the Government's position in a detention hearing, and represented the Government in an initial appearance
- Composed the 'Analysis' section for a brief responding to defendant's Compassionate Release motion, performed legal research, and attended court proceedings, proffers, and a declination presentation

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA — **Washington, DC**
Judicial Extern for the Honorable Reggie B. Walton — **August 2020 – November 2020**

- Drafted a bench memorandum regarding defendant's 12(b)(6) motion to dismiss in a Title VII case and assisted in preparing the subsequent order for the motion
- Researched clerks' legal questions and proofread memorandum opinions to ensure Bluebook compliance

U.S. DEPARTMENT OF JUSTICE, CIVIL RIGHTS DIVISION — **Washington, DC**
Criminal Section Intern — **June 2020 – August 2020**

- Prepared a memorandum analyzing whether a defendant's offense of conviction constituted a predicate felony under the felony murder doctrine, drafted a *motion in limine* to preclude arguments regarding potential penalties, and performed legal research to assist attorneys with evaluating the admissibility of evidence
- Analyzed case law and prepared summaries on the legal status of a specific civil right in each circuit and the potential for litigation pursuant to that right

GEORGETOWN UNIVERSITY LAW CENTER – PROFESSOR IRV GORNSTEIN — **Washington, DC**
Research Assistant — **May 2020 – August 2020**

- Summarized legal issue(s) and arguments in cases set to be heard during the October 2020 U.S. Supreme Court term

SCHRAYER & ASSOCIATES — **Washington, DC**
Associate — **March 2016 – June 2019**

- Created background memoranda, stakeholder analysis, and strategic roadmaps for clients' federal and state advocacy campaigns and drafted talking points and speeches for President & CEO
- Collaborated with team members in creating strategic communications materials including talking points, digital newsletters, and social media content

INTERESTS

- Road trips (completed cross-country U.S. trip) & U.S. History

Record of: David Ross Tannenbaum
GUID: 800066870

Course Level: Juris Doctor

Entering Program:
Georgetown University Law Center
Juris Doctor
Major: Law

Subj	Crs	Sec	Title	Crd	Grd	Pts	R
Fall 2019							
LAWJ	001	95	Civil Procedure David Hyman	4.00	A-	14.68	
LAWJ	002	95	Contracts Urska Velikonja	4.00	A-	14.68	
LAWJ	004	53	Constitutional Law I: The Federal System Paul Smith	3.00	B+	9.99	
LAWJ	005	50	Legal Practice: Writing and Analysis Frances DeLaurentis	2.00	IP	0.00	

Dean's List Fall 2019

	EHrs	QHrs	QPts	GPA
Current	11.00	11.00	39.35	3.58
Cumulative	11.00	11.00	39.35	3.58

Subj	Crs	Sec	Title	Crd	Grd	Pts	R
Spring 2020							
LAWJ	003	51	Criminal Justice Irving Gornstein	4.00	P	0.00	
LAWJ	005	50	Legal Practice: Writing and Analysis Frances DeLaurentis	4.00	P	0.00	
LAWJ	007	95	Property Madhavi Sunder	4.00	P	0.00	
LAWJ	008	95	Torts John Hasnas	4.00	P	0.00	
LAWJ	1323	50	International Law, National Security, and Human Rights Milton Regan	3.00	P	0.00	
LAWJ	611	13	Questioning Witnesses In and Out of Court Michael Williams	1.00	P	0.00	

Mandatory P/F for Spring 2020 due to COVID19

	EHrs	QHrs	QPts	GPA
Current	20.00	0.00	0.00	0.00
Annual	29.00	11.00	39.35	3.58
Cumulative	31.00	11.00	39.35	3.58

----------Continued on Next Column----------

Subj	Crs	Sec	Title	Crd	Grd	Pts	R
Fall 2020							
LAWJ	1491	01	Externship I Seminar (J.D. Externship Program) Sandeep Prasanna		NG		
LAWJ	1491	119	~Seminar Sandeep Prasanna	1.00	A	4.00	
LAWJ	1491	121	~Fieldwork 3cr Sandeep Prasanna	3.00	P	0.00	
LAWJ	165	09	Evidence Tanina Rostain	4.00	A	16.00	
LAWJ	264	05	Labor Law: Union Organizing, Collective Bargaining, and Unfair Labor Practices Harold Datz	3.00	A	12.00	
LAWJ	536	11	Legal Writing Seminar: Theory and Practice for Law Fellows Frances DeLaurentis	3.00	A	12.00	

Dean's List Fall 2020

	EHrs	QHrs	QPts	GPA
Current	14.00	11.00	44.00	4.00
Cumulative	45.00	22.00	83.35	3.79

Subj	Crs	Sec	Title	Crd	Grd	Pts	R
Spring 2021							
LAWJ	1334	09	Justice and Accountability for International Atrocity Crimes: Bridging Theory and Practice Seminar Jane Stromseth	2.00	A	8.00	
LAWJ	1349	08	Administrative Law Lisa Heinzerling	3.00	A	12.00	
LAWJ	1714	08	Labor Law and the Changing US Workforce Seminar Mark Gaston Pearce	2.00	A	8.00	
LAWJ	215	05	Constitutional Law II: Individual Rights and Liberties Girardeau Spann	4.00	A	16.00	
LAWJ	536	11	Legal Writing Seminar: Theory and Practice for Law Fellows Kristen Tiscione	2.00	A	8.00	

Dean's List Spring 2021

	EHrs	QHrs	QPts	GPA
Current	13.00	13.00	52.00	4.00
Annual	27.00	24.00	96.00	4.00
Cumulative	58.00	35.00	135.35	3.87

----------Continued on Next Page----------

Record of: David Ross Tannenbaum
GUID: 800066870

Subj	Crs	Sec	Title	Crd	Grd	Pts	R
---------- Fall 2021 ----------							
LAWJ	1750	09	Police Accountability Seminar	2.00	A	8.00	
	Christy Lopez						
LAWJ	361	03	Professional Responsibility	2.00	A	8.00	
	Stuart Teicher						
LAWJ	500	06	Center for Applied Legal Studies		NG		
	Andrew Schoenholtz						
LAWJ	500	30	~Legal Drafting		A-		
LAWJ	500	81	~Advocacy	4.00	A-	14.68	
LAWJ	500	82	~~Classroom Work	3.00	A-	11.01	
LAWJ	500	83	~~Clinical Skills	3.00	A-	11.01	

	EHrs	**QHrs**	**QPts**	**GPA**
Current	14.00	14.00	52.70	3.76
Cumulative	72.00	49.00	188.05	3.84

Subj	Crs	Sec	Title	Crd	Grd	Pts	R
---------- Spring 2022 ----------							
LAWJ	1687	05	White Collar Criminal Practice: International Scandal Investigations (Week One Teaching Fellows)	1.00	NR	0.00	
In Progress:							
LAWJ	121	09	Corporations	4.00	In Progress		
LAWJ	1245	09	Trial Practice and Applied Evidence	3.00	In Progress		
LAWJ	1322	05	Civil Rights Statutes and the Supreme Court Seminar	2.00	In Progress		
LAWJ	178	05	Federal Courts and the Federal System	3.00	In Progress		

---------- Transcript Totals ----------

	EHrs	**QHrs**	**QPts**	**GPA**
Current	0.00	0.00	0.00	0.00
Annual	14.00	14.00	52.70	3.76
Cumulative	72.00	49.00	188.05	3.84

---------- End of Juris Doctor Record ----------

Georgetown Law
Supreme Court Institute
600 New Jersey Avenue, NW
Washington, DC 20001

May 05, 2022

The Honorable Kenneth Karas
Charles L. Brieant, Jr. United States Courthouse
300 Quarropas Street, Room 533
White Plains, NY 10601-4150

Dear Judge Karas:

I am a Professor of Law at the Georgetown Law Center and the Executive Director of the Supreme Court Institute. David Tannenbaum was a student in one of my classes and served as one of my summer research assistants. Based on my experience with David, I highly recommend him for a clerkship.

David first came to my attention as a student in my first-year Criminal Justice Class. I always select my summer RAs from my that class, and I look for the students whose class participation is exceptional. David was one of those students. He was always well-prepared and offered valuable insights that escape most other students. In that year, classes were graded on a pass-fail basis. But had they not been, I am certain David would have gotten one of the top grades. Throughout the term, he demonstrated complete mastery of the material.

As one my four summer research assistants, David's job was to prepare draft summaries of cases that the Supreme Court had agreed to hear in the following term. Many of the cases fell into complex areas of the law as to which my RAs had no prior experience. David's summaries were outstanding. They displayed a perfect grasp of the essential issue in the case and were presented in a way that anyone could easily digest. David's summaries were also easy to edit. His special talent was providing the most tightly worded summaries without sacrificing anything of value.

David is also exceptionally well-prepared for a clerkship. He maintains a 3.87 average, placing him in the top 10% of the class. He is Executive Editor of the American Criminal Law Review. He also interned for Judge Walton in the U.S. District Court for the District of Columbia, for the U.S. Attorneys' Office for the District of New Jersey, and for the Civil Rights Division at Main Justice. After graduation, David will become an Associate at Hughes Hubbard & Reed.

Finally, based on my experience with David I am confident he could fit into any chambers. He is hard-working, poised under pressure, and easy to get along with. In sum, I strongly recommend David for a clerkship.

Sincerely,

Irv Gornstein
Professor of Law
Executive Director, Supreme Court Institute

Irv Gornstein - ilg@law.georgetown.edu

Georgetown Law
600 New Jersey Avenue, NW
Washington, DC 20001

May 05, 2022

The Honorable Kenneth Karas
Charles L. Brieant, Jr. United States Courthouse
300 Quarropas Street, Room 533
White Plains, NY 10601-4150

Dear Judge Karas:

I am writing to recommend enthusiastically Mr. David Tannenbaum for a judicial clerkship with your chambers. Mr. Tannenbaum was a student in my first year Legal Practice course in 2019-20 and was competively selected to be one of my Law Fellows for the 2020-21 academic year. As such, he was a student in my upper level Law Fellow writing seminar during the fall 2020 semester (I was on sabbatical in the spring 2021 semester). Additionally, Mr. Tannenbaum served as my research assistant during the summer of 2021 and was selected to be a Teaching Fellow for my January 2022 Week One class: White Collar Criminal Practice: International Scandal Investigations. As one of my Law Fellows, Mr. Tannenbaum helped me teach the first year required Legal Practice: Writing and Analysis class. As a Week One Teaching Fellow, he helped facilitate our simulation class. During the past two and a half years, I had the opportunity to observe Mr. Tannenbaum during our weekly two hour classes, conference individually with him many times throughout the year, and work very closely with him on a daily basis. I witnessed his research and writing abilities, observed his public speaking and presentation skills, discussed his career goals and followed his engagement with fellow students. Based on these interactions with Mr. Tannenbaum, the consistently high quality of his written work product, and his demonstrated work ethic, I believe he would be an asset to your chambers.

During my twenty-three years teaching law students, and my prior experience as a litigation partner in a major D.C. law firm, I have had the opportunity to work with a number of impressive young lawyers and law students. I count David Tannenbaum among that number. He is dedicated to honing his craft as a lawyer and to using his law degree in the service of others. Indeed, his resume speaks to his commitment to public service. Last summer, he interned with the United States Attorney's Office in the District of New Jersey. Previously, he was a judicial extern for the Honorable Reggie B. Walton, United States District Court for the District of Columbia, and he was an intern in the Criminal Section of the Civil Rights Division of the U.S. Department of Justice. Each of these internships exposed Mr. Tannenbaum to different aspects of the U.S. legal system, provided him with an opportunity to review the written work of and observe the advocacy skills of lawyers engaged in high stakes litigation, and allowed him to debate legal issues and concepts with clerks, other interns, and supervisors. Moreover, these experiences have allowed him to hone his craft and provided him with opportunities to grow as a lawyer, including the ability to conduct direct and cross examination in an evidentiary hearing last summer.

Mr. Tannenbaum has impressed me as extremenly diligent and poised, someone who cares deeply about people, and someone who demonstrates a sharp intellect and curious mind. He struggled initially with transitioning from his prior policy writing to legal writing, and he came to my office seeking instruction and clarification. Unlike others, however, Mr. Tannenbaum came prepared, with specific and pointed questions. He had assessed his weaknesses and sought directed help. Throughout the course of the year, his writing improved considerably and he ended the year as one of the stronger writers in my class. As a part of the fall semester of the Legal Practice course, students are required to conduct extensive research and draft at least two predictive office memoranda. In the spring semester, students write a draft and then revise an appellate brief on two issues of constitutional law. At the end of each semester, students complete a take-home examination that requires them to conduct independent research and draft a predictive memo in the fall, and a persuasive brief in the spring. Mr. Tannenbaum's basic writing skills were solid from the outset and he had strong research skills. His ability to set forth a detailed analytical paradigm grounded in the law and incorporating legal reasoning developed over the course of the year as he took advantage of all of the writing opportunities to improve his analysis and legal writing. The switch to all virtual learning and the decision to convert to mandatory pass/fail grading for the spring 2020 semester prevented me from providing Mr. Tannenbaum with a grade in the course. Nonetheless, he performed quite well on the fall take home exam and his work product consistently improved throughout the year. He was producing well-researched and well-written legal documents that would have placed him in at least the top fifteen percent of the class by the spring. Unfortunately, he has no grade to reflect such stellar performance.

Mr. Tannenbaum further developed his research and legal writing skills last year by serving as a Law Fellow. As a Law Fellow, Mr. Tannenbaum was selected through a highly competitive process that included personal interviews and submission of a transcript, writing sample, formal application, and recommendations. Mr. Tannenbaum was selected because of his demonstrated excellence in legal research and legal writing, strong intellect, engaging and mature personality, and interest in helping to teach new law students the intricacies of legal thought and expression. Already a strong writer, I am delighted to note that his writing improved during his Law Fellow year, enhancing his already strong analytical and research skills. As a Law Fellow, Mr. Tannenbaum was required to provide detailed comments and feedback on multiple drafts of several writing assignments, and to conduct individual conferences with ten students on each draft of multiple documents. Mr. Tannenbaum's well written comments explained analytical weaknesses, pinpointed logical leaps, and noted research gaps in clear and supportive language. He was able to tell students not only what was missing in their analysis but to offer several ways to correct

their writing problems. His comments facilitated active thinking and rewriting by his students. Moreover, he did all of this work virtually, never meeting any of his students in person. And, he displayed effective time managements skills fulfilling his Law Fellow duties while also externing with U.S. District Judge Walton.

He has seized opportunities within the Georgetown Law community to enrich his education. He is an executive editor of Georgetown's American Criminal Law Review. He is also the chapter liaison for the American Constitution Society, a member of the Jewish Law Students Association, and a volunteer with Home Court. Additionally, last summer he juggled his internship along with RA duties for me. Mr. Tannenbaum has managed to be quite successful in his legal studies, earning a GPA of 3.84, while still embracing extracurricular activities, pursuing outside interests, and following his beloved Philadelphia sports teams.

Mr. Tannenbaum's demonstrated intelligence, passion and commitment make him an ideal candidate for a judicial clerkship. Equally impressive is his calm demeanor, welcoming personality, and collaborative nature. I witnessed his collaborative nature first hand in our Law Fellow seminar where individualism gives way to the best interests of our class and our students. I also observed his efforts at working collaboratively with first year students, trying to facilitate but not dictate their writing process or product. At the same time, he works well independently; he is not afraid to make a decision and to be held accountable for his actions. His willingness to embrace different learning and working styles was on full display this January, when he served as a Teaching Fellow in a seminar composed entirely of third year law students. He effectively adapted to a new role with a different audience and successfully facilitated the various class practicum assignments and exercises.

During the time that I have known Mr. Tannenbaum, he has never missed a deadline, never submitted a work product that was less than complete, polished and effective, and never once complained. Moreover, in class, he was very inclusive, even of those students who were on the social fringe. For all of these reasons, it should come as no surprise that he is held in high regard and well respected by his peers and by faculty with whom he has worked. He would be a pleasure to work with, would enrich the lives of those around him, and would enhance your chambers.

I obviously have a very high opinion of Mr. Tannenbaum and I wholeheartedly recommend him for a judicial clerkship. Please do not hesitate to contact me if I can be of any further assistance to you.

Sincerely,

Frances C. DeLaurentis

Frances DeLaurentis - fcd@law.georgetown.edu

U.S. Department of Justice
Civil Rights Division
Criminal Section – 4CON
950 Pennsylvania Ave, NW
Washington DC 20530

May 05, 2022

The Honorable Kenneth Karas
Charles L. Brieant, Jr. United States Courthouse
300 Quarropas Street, Room 533
White Plains, NY 10601-4150

Dear Judge Karas:

I write to recommend David Tannenbaum for a clerkship in your chambers. I serve as a prosecutor with the Criminal Section of the Justice Department's Civil Rights Division. I handle a range of criminal violations, including hate crimes and deprivations of rights under color of law. David joined the Criminal Section as an intern for the summer of 2020. I had the privilege of serving as David's mentor and of supervising him on several substantive projects.

Despite our total telework status in the Section, David distinguished himself as a personable, motivated, capable, and meticulous assistant on numerous investigations and prosecutions. While most interns quietly awaited new work, David actively sought it out and demonstrated earnest interest in the cases beyond his discrete research or writing role. With regard to his work product, David has a unique pairing of strengths that I believe would make him a dependable law clerk – he is capable of generating both quick and exhaustive answers to questions, depending on the needs of the moment.

For example, one assignment David handled for me had an extremely short turnaround. He culled through case law to provide me with an accurate and straightforward answer to an admissibility question for a piece of forensic evidence. He backed up that answer with a keynote summary of relevant cases, each of which was on point. On a longer-term project David handled, drafting a motion *in limine* to exclude certain character evidence, he took an exhaustive approach, soundly presenting every appropriate argument for exclusion. He provided me with that draft several days in advance of the deadline I had given him, and it was the exceedingly rare example of intern work product ready to be filed.

I am confident David will be a personable and responsible law clerk, on whom you can depend for swift and sound legal research and writing. I strongly recommend him for a clerkship.

If you have any questions or if you would like to discuss David further, please feel free to contact me at (571) 309-6322.

Very truly yours,

Kyle R. Boynton
Trial Attorney
Criminal Section
Civil Rights Division

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Writing Sample

The following writing sample is an excerpt from a bench memorandum I wrote for my Legal Writing Seminar: Theory and Practice class. It addresses whether Central High School violated the First Amendment rights of student Candace Keys when the school suspended Keys for comments she made during an after-school, Zoom study session.

This sample analyzes 1) whether the student's speech was on campus under *B.L. v. Mahanoy Area School District*, 964 F.3d 170 (3d Cir. 2020), *cert. granted*, 141 S. Ct. 976 (2021), and 2) if the speech was on campus, whether her speech was punishable under *Tinker v. Des Moines Independent County School District*, 393 U.S. 503 (1969). The fact pattern for our assignment involved Central High School suspending student Candace Keys after she expressed her disagreement with the school's mask requirement before Keys' AP Physics class returned to in-person learning during the COVID-19 pandemic. Keys filed a civil action pursuant to 42 U.S.C. § 1983 and the School District moved for summary judgment. The district court granted the motion, and Keys appealed.

The following text is the bench memorandum for the Third Circuit's review of that decision. For brevity, I have only included the analysis section. This writing sample contains minimal edits that reflect my instructor's feedback on a draft version of this assignment.

Analysis

The First Amendment prohibits government restrictions on the freedom of speech. U.S. Const. amend. I. However, in *Tinker v. Des Moines Independent County School District*, 393 U.S. 503, 507 (1969), the Court recognized "the need for affirming the comprehensive authority of the States and of school officials, consistent with fundamental constitutional safeguards, to prescribe and control conduct in the schools." While the Court observed that "[s]chool officials do not possess absolute authority over their students," *Tinker*, 393 U.S. at 511, the *Tinker* Court held that a public school may regulate student speech or actions that actually or are reasonably forecast to "substantially disrupt the work and discipline of the school," *id.* at 513, or "intrudes [on] the rights of other students," *see id.* at 508.

This case implicates a preliminary question of when *Tinker* applies to speech beyond "the schoolhouse gate." *Tinker*, 393 U.S. at 506. The Third Circuit recently addressed this question amidst a split among the circuits, holding that "*Tinker* does not apply to off-campus speech." *Mahanoy*, 964 F.3d at 189.

On appeal, Keys argues that, pursuant to the *Mahanoy* rule, her speech was off campus; thus, the school's regulation of her speech violated Keys' First Amendment rights. Keys also argues that even if her speech was on campus, the speech could not be regulated under *Tinker* because Keys' speech did not actually cause a substantial disruption, support a reasonable forecast of substantial disruption, or interfere with the rights of other students.

I. The School Likely Violated Keys' First Amendment Rights Because Keys' Speech During Her Zoom Study Group Likely Occurred Off Campus.

The Third Circuit distinguishes between on-campus speech, which is subject to the analysis under *Tinker*, and off-campus speech, which is not. Off-campus speech occurs "outside

school-owned, -operated, or -supervised channels and [ ] is not reasonably interpreted as bearing the school's imprimatur." *Mahanoy*, 964 F.3d at 189. Keys' speech was likely off campus because her speech likely did not occur within a school channel, nor did the speech likely reasonably bear the school's imprimatur.

A. Because Keys' speech occurred during an after-school, non-mandatory study group meeting on Zoom, Keys' speech was not likely within a school channel under *Mahanoy*.

Keys' speech likely did not occur within a school channel. "[S]peech that is outside school-owned, -operated, or -supervised channels" is off-campus speech. *See Mahanoy*, 964 F.3d at 189. *Mahanoy* involved a student, B.L., who was suspended from her high school cheer team after she posted a Snapchat critical of the team. *Id.* at 175. This Court held that B.L.'s speech was off campus and thus not subject to school regulation because the snap was created during non-school hours on the weekend, away from the school campus, and on a virtual media platform not connected with the school. *Id.* at 179–81.

Keys' speech was similar to the snapchat in *Mahanoy* because Keys' speech occurred after school hours and without the use of school resources; thus, Keys' speech did not occur on a school-owned or -operated channel. Keys expressed her support for former President Trump and her intention to not wear a mask during a voluntary study group meeting organized by the students and hosted on Zoom in the evening after school. Central does not officially use Zoom, instead, the school uses Google Classroom and Google Meet for all coursework management and class instruction. Thus, the channel for Keys' speech was a private digital service neither owned nor operated by the school.

Keys' study group, which was formed by the students themselves, was also unlikely supervised by the school under *Mahanoy*. School supervision requires actual faculty supervision

of students during a school activity. *See Morse v. Frederick*, 551 U.S. 393, 396 (2007) (noting that the student's speech occurred during a school-supervised event where "[t]eachers and administrators were interspersed among the students [at the event] and charged with supervising them"); *Hazelwood Sch. Dist. v. Kuhlmeier*, 484 U.S. 260, 268 (1988); *Mahanoy*, 964 F.3d at 180–81. In *Hazelwood*, the Court discussed the faculty supervision of a school paper produced as part of a high school journalism class, noting that the journalism teacher actually supervised the production of the paper by selecting the editors, determining the publication dates, assigning story ideas, monitoring the progress of student stories, and then editing the stories. *Hazelwood*, 484 U.S. at 268. Unlike the active supervision of the journalism professor in *Hazelwood*, Nelson did not actively supervise the AP Physics study groups. Nelson never actually visited the group and the only direct tangible connection between the study group and the school was the requirement that the group's hours be logged and submitted to Google Classroom. Yet, Keys herself never submitted these hours, and the possible after-the-fact review of these logs by Nelson would unlikely be enough to render the channel supervised by the school. Reviewing the study group's log does not rise to the same active supervision of work such as editing or assigning stories as was highlighted in *Hazelwood*. Thus, the school likely did not supervise the channel Keys' speech occurred in.

B. <u>Because Keys' speech was not reasonably viewed as the school's speech itself, her speech likely cannot be reasonably interpreted as bearing the school's imprimatur.</u>

Keys' speech likely did not reasonably bear the school's imprimatur. Speech can be regulated by a school under *Tinker* if the speech is reasonably interpreted as bearing the school's imprimatur. *Mahanoy*, 964 F.3d at 189. Speech reasonably bears the school's imprimatur if a third party may reasonably view the student's speech as the school's own speech. *See*

Hazelwood, 484 U.S. at 273; *Saxe v. State Coll. Area Sch. Dist.*, 240 F.3d 200, 213–214 (3d Cir. 2001). If the speech occurs within an activity that is part of the school's core curriculum and/or actively supervised by school officials, then a third party may reasonably attribute the speech to the school. *See Hazelwood*, 484 U.S. at 271. The Court in *Hazelwood* held that school officials could regulate what was published in a newspaper, *id.* at 273, written and edited by a school journalism class, *id.* at 262. The Court concluded that the newspaper reasonably bore the school's imprimatur because production of the newspaper was supervised by a teacher who exercised actual significant supervision over the paper and because the newspaper was "part of the educational curriculum and a regular classroom activit[y]" designed to impart specific lessons to the enrolled students. *Id.* at 268 (internal quotations omitted) (alteration in original). As discussed above, though Nelson offered to check in with the group if invited, he never actually did so; thus, he did not exercise the type of actual supervision over the group identified as relevant in *Hazelwood* to a finding of bearing the school's imprimatur. While the study group did review coursework on their own, was eligible to receive extra credit, and was intended as a substitute for in-person after-school lab sessions, the study group was not designed by Nelson or the school to be a part of the core curriculum of the class as was the newspaper in the Journalism II course in *Hazelwood*. The groups were encouraged generally as a voluntary tool to succeed in the class. It would likely not be reasonable for a third party to view Keys' speech made during an unsupervised, non-mandatory study group that was not part of the AP Physic class's regular activity or core curriculum as the school's speech.

The School District may argue that if Keys' speech went unpunished, third parties may have reasonably viewed Keys' speech as endorsed by the school itself. However, a concern that an observer may infer the school endorses whatever speech it permits is insufficient to support a

reasonable interpretation of the speech bearing the school's imprimatur. *See Saxe*, 240 F.3d at 214 (citing *Hedges v. Wauconda Comm. Unit Sch. Dist. No. 118*, 9 F.3d 1295, 1299 (7th Cir. 1993). Further, it is unlikely that third parties would reasonably regard Keys' speech opposing masks as emanating from a school with a strict mask mandate even if the school did not take action to regulate Keys' speech. Thus, Keys' speech likely did not reasonably bear the school's imprimatur.

II. If Keys' Speech Was on Campus, Then the School's Suspension Likely Violated Keys' First Amendment Rights as Keys' Speech Was Likely Not Substantially Disruptive nor An Invasion of the Rights of Other Students Under *Tinker*.

The School District has the burden of showing that its regulation of Keys' speech is constitutional under *Tinker*. *B.H. v. Easton Area Sch. Dist*., 725 F.3d 293, 321 (3d Cir. 2013); *J.S. v. Blue Mountain Sch. Dist.*, 650 F.3d 915, 928 (3d Cir. 2011). A public school can regulate student speech that is actually substantially disruptive of the work and discipline of the school, is reasonably forecast to cause a substantial disruption, or interferes with the rights of other students. *See Tinker*, 393 U.S. at 508–513; *Saxe*, 240 F.3d at 211. The School District likely cannot satisfy its burden in this case because Keys' speech likely did not cause an actual substantial disruption, did not support a reasonable forecast of substantial disruption, and did not interfere with the rights of other students at Central.

A. <u>Because Keys' speech likely did not interrupt school activities or intrude in school affairs, her speech was likely not actually substantially disruptive.</u>

Keys' speech likely did not actually cause a substantial disruption of the work and discipline of the school. An actual substantial disruption substantially "interrupt[s] school activities" or "intrude[s] in [ ] school affairs[.]" *See Tinker*, 393 U.S. at 514. The interruption

must be more than several isolated incidents, *see B.H.*, 725 F.3d at 321, and more than complaints from those who viewed or heard the speech to constitute an actual substantial disruption, *see Tinker*, 393 U.S. at 508; *Mahanoy*, 964 F.3d at 195. In *Tinker*, a public school suspended students for wearing black armbands that the students wore to express their opposition to the Vietnam War. *Tinker*, 393 U.S. at 504. The Court held that the school violated the students' First Amendment rights, reasoning, in part, that though some students "made hostile remarks to the children wearing armbands" there was no evidence that the suspended students' conduct caused any disruption to the work of the school or any class. *See id.* at 508; *see also Mahanoy*, 964 F.3d at 195 (Ambro, J., concurring) (reasoning that the student complaints resulting from the snapchat post were not sufficient to support a finding of substantial disruption)*; J.S.*, 650 F.3d at 929 (reasoning that "beyond general rumblings, a few minutes of talking in class, and some officials rearranging their schedules . . . , no disruptions occurred" due to the speech at issue in that case).

Keys' speech likely did not interrupt school activities or intrude in school affairs to the level required to constitute an actual substantial disruption. Keys' stated intention to not wear a mask and the picture she posted indicating her support for President Trump caused Judy to become upset and Alex to voice concern for his health if Keys did come to school without a mask. Keys' comments spurred students, parents, and teachers to email and call Principal Lovejoy to express their concerns over Keys' stated refusal to wear a mask. Lovejoy also appears to insinuate that she was having trouble focusing on the transition back to in-school learning because of Keys' speech and the reaction it caused. The concerned reactions of the community are similar to the hostile remarks in *Tinker*, complaints in *Mahanoy*, and "general rumblings" in *J.S.* that were held not to be sufficient evidence of actual substantial disruption.

The group also met again after Keys' comments and though the September 12 meeting was less friendly and shorter than usual, the students still met and worked on their homework. Further, though Lovejoy may have been distracted from her efforts to manage the return to in-school learning, this distraction was likely no more intrusive than the need to rearrange schedules or settle down a distracted class in *J.S.*, disruptions that this Court held did not support a finding of substantial disruption. Thus, Keys' speech likely did not actually cause substantial disruption.

While the Pennsylvania Supreme Court did consider concerns over student health and complaints from parents as evidence of substantial disruption in *J.S. v. Bethlehem Area School District*, 807 A.2d 847, 869 (Pa. 2002), the court noted in that case that "[t]he most significant disruption caused by the [regulated speech] was [the] direct and indirect impact of the emotional and physical injuries" to the teacher who was the subject of the speech in that case. In *Bethlehem*, the teacher was forced to take medical leave and not finish the school year due to the impact of threatening and derogatory student speech directed at the teacher. *Bethlehem*, 807 A.2d at 869. The concerns related to student health articulated by students and parents in Keys' case were not accompanied by a similar direct interruption of school activities as the teacher taking a medical leave of absence in *Bethlehem* represented. The concerns over student health and parent complaints were likely not enough on their own to constitute an actual substantial disruption in *Bethlehem*, and similarly would likely not be enough to satisfy this prong of *Tinker* in Keys' case.

B. <u>Because Keys' speech did not raise a specific and concrete threat of substantial disruption, her speech was likely not reasonably forecast to cause a substantial disruption of the work and discipline of the school.</u>

Keys' speech was also likely not reasonably forecast by Central to cause a substantial disruption of the work and discipline of the school. Student speech is not protected from

regulation if school officials may reasonably forecast the speech to cause a substantial disruption. *See Tinker*, 393 U.S. at 513–514. A reasonable forecast that a substantial disruption will occur must be "specific[] and concrete[]" and can be supported by past disruptions stemming from similar speech. *See Saxe*, 240 F.3d at 212; *see also DeJohn v. Temple Univ.*, 537 F.3d 301, 317 (3d Cir. 2008) (noting that speech must create a "tenable threat of disruption"); *Sypniewski v. Warren Hills Reg'l Bd. of Educ.*, 307 F.3d 243, 257 (3d Cir. 2002). In *Sypniewski*, the school district enacted a racial harassment policy after repeated instances of racial conflict in the district; the policy prohibited the display of symbols of racial hate including the Confederate flag. *Sypniewski*, 537 F.3d at 249. A student challenged the discipline he received under this policy after wearing a shirt that discussed redneck themes but did not contain the Confederate flag. *Id.* at 246. This Court held that the school district violated the First Amendment because there was not a strong enough relationship between the term redneck and association with a known white supremacist gang or the Confederate flag to justify the shirt being prohibited under the reasonable forecast of substantial disruption prong. *See id.* at 256. This Court reasoned that a school "must point to a particular and concrete basis for concluding that the association is strong enough to give rise to well-founded fear of genuine disruption in the form of substantially interfering with school operations." *Id.* at 257.

Central likely did not reasonably forecast a substantial disruption stemming from Keys' speech. Lovejoy received calls and emails from students, parents, and teachers concerned about what Keys said and the threat she posed to student health if she attended school without a mask. Keys' speech likely did not present a specific and concrete threat because the school had a plan to station a school security officer at the entrance of the school, and the officer would likely not have let Keys into the school without a mask. Since Keys would not have been able to enter the

school without a mask, the forecast of substantial disruption stemming from a fear over student health and the teachers' ability to enforce school mask rules was likely not concrete and therefore not reasonable. Further, similar to the school in *Sypniewski*, Central cannot support its forecast of substantial disruption with examples of past disruptions stemming from similar incidents of the specific speech at issue. Lovejoy acknowledged that she had never previously suspended a student for engaging in political speech, which was the type of speech Keys engaged in. Given the presence of the security guard precluding Keys' ability to enter the school without a mask and the lack of past incidents of disruption from similar political speech, it is unlikely that Central's forecasted threat of substantial disruption from Keys' speech was specific and concrete enough to be a reasonable forecast.

The School District may argue, as Lovejoy seems to suggest, that Keys' mere presence at the school was reasonably forecast to cause a substantial disruption even if she did not enter the school. While "*Tinker* does not require school officials to wait until disruption actually occurs before they may act," *LaVine v. Blaine Sch. Dist.*, 257 F.3d 981, 989 (9th Cir. 2001), the desire to avoid controversy that may result from speech is not a sufficient reason to regulate speech, *see Tinker*, 393 U.S. at 510 (reasoning that an "urgent wish to avoid controversy which might result from the expression" was insufficient to support a reasonable forecast of substantial disruption). Lovejoy noted that she was "particularly concerned that [Keys' refusal to wear a mask] would snowball to include larger but related political issues" in an election year. Yet, as the Court observed in *Tinker*, such apprehension over political controversy and the debate that may result from a student's speech is not a sufficient reason to restrict that speech. *See Tinker*, 393 U.S. at 510. Further, while protests against wearing masks have garnered headlines, including possibly the Trump rally Keys attended the weekend before her Zoom comments,

neither Lovejoy nor the School District cited any evidence that Keys' speech prompted any concrete or specific plans for protests at the school. If the apprehension of the school in *Tinker* over the general disruption that a group of students protesting the contentious Vietnam War may prompt was not sufficient to support a reasonable forecast of substantial disruption in that case, then it is unlikely that Central could sustain a similar argument based on one student's speech and given that the anti-mask movement is likely not any more of a divisive political issue than the Vietnam War was in 1969.

The School District may also argue that Keys' threat to attend school without a mask was similar to a threat of school violence; thus, her speech was reasonably forecast to cause a substantial disruption. District courts in the Third Circuit have analyzed threats of violence under *Tinker* and found that threats of violence were reasonably forecast to cause a substantial disruption. *See J.R. v. Penns Manor Area Sch. Dist.*, 373 F. Supp. 3d 550, 562 (W.D. Pa. 2019); *A.N. v. Upper Perkiomen Sch. Dist.*, 228 F. Supp. 3d 391, 400 (E.D. Pa. 2017). In *J.R.*, the suspended student had discussed, with classmates and a guidance counselor, who he would shoot at the school—including targeting a specific teacher—and how he would perform a school shooting. *J.R.*, 373 F. Supp. 3d at 563. The court reasoned that "[w]ithout doubt, a middle school student who engages in conversations about school shootings with classmates might cause a substantial disruption[.]" *Id.* In *A.N.*, a student was suspended for producing a mash-up video that referenced school shootings. *A.N.*, 228 F. Supp. 3d at 393. The court reasoned that the school had a reasonable fear of substantial disruption from this video because school was canceled in response to the video and "[c]onsidering the recent history of school shootings across the nation[.]" *Id.* at 400.

While Keys' presence in a classroom without a mask may have posed a threat to other student's health, that threat is unlikely the same threat posed by a student threatening, or perceived to be threatening, a school shooting or school violence. As the court in *A.N.* noted, school shootings are a tragic reality for American students; thus, the fear of substantial disruption from a threat of a school shooting is more grounded in past examples than the speech at issue in this case. Though a student refusing to wear a mask inside a school may pose a threat to student and teacher health, the threat in this case was likely not concrete because of the presence of the security officer and the likely ability of that officer to prevent Keys from entering the school. While still potentially a health concern, Keys simply standing outside the school without a mask would likely present far less of a health threat and certainly far less of a threat than a student who arrived with a firearm outside the school. Thus, the school shooting cases are unlikely to support the School District's argument that Keys' speech was reasonably forecast to cause a substantial disruption of the work and discipline of the school.

C. Because Keys' speech likely did not threaten violence or severe harassment, her speech likely did not interfere with the rights of other students.

Keys' speech likely did not interfere with the rights of other students at Central. A public school can regulate student speech that interferes with the "rights of other students to be secure and to be let alone." *Tinker*, 393 U.S. at 508. The Third Circuit has never held that student speech interfered with the rights of others, and the *Saxe* Court noted that the scope of the interference with the rights of others prong is unclear. *Saxe*, 240 F.3d at 217. However, it is likely that speech must be more than offensive and must threaten severe or pervasive harassment or violence to constitute speech that interferes with the rights of others. *See Wynar v. Douglas Cty. Sch. Dist.*, 728 F.3d 1062, 1072 (9th Cir. 2013); *Saxe*, 240 F.3d at 217; *DeJohn*, 537 F.3d at

320; *see also Doe v. Valencia Coll.*, 903 F.3d 1220, 1230 (11th Cir. at 2018) (holding persistent harassment of female student violated interference with rights of others prong). This Court in *DeJohn* held that a university sexual harassment policy violated the First Amendment, *DeJohn*, 537 F.3d at 320, reasoning in part that because the harassment policy was not "qualified with a standard akin to a severe or pervasive requirement, [it] may suppress core protected speech" and thus could not be justified as prohibiting interference with the rights of others under *Tinker*, *id.* at 319–20. The Ninth Circuit in *Wynar* held that a school did not violate the First Amendment when it suspended a student after he made threatening comments on MySpace regarding perpetrating a school shooting. *Wynar*, 728 F.3d at 1065. The court reasoned that the school shooting threats were both reasonably forecast to cause a substantial disruption, *id.* at 1070, and interfered with the rights of others, *id.* at 1072 ("[W]ithout doubt the threat of a school shooting . . . represent[s] the quintessential harm to the rights of other students to be secure.").

Keys' speech likely did not interfere with the rights of other Central students to be secure and let alone because her speech did not constitute severe or pervasive harassment and did not threaten direct violence similar to a school shooting. The School District may argue, similar to the school violence argument under the reasonable forecast of substantial disruption analysis, that Keys' speech interfered with the rights of other students to be secure. There are relatively few cases analyzing and relying on *Tinker*'s rights of others prong, *see id.* 1071, and the court in *Wynar* highlighted the specific threat of school shootings in its relatively brief analysis of this prong, *id.* at 1072. There is also no evidence that Keys' one-time speech constituted the severe or pervasive harassment that this Court in *DeJohn* believed would interfere with the rights of others. The danger posed by Keys' speech and threat to attend school without a mask was mitigated by the fact that the school had a plan in place to prevent Keys from ever entering the

school. Further, as the Ninth Circuit observed, the reality of school shootings in this country renders a threat of a school shooting far more palpable and thus likely dissimilar to the threat posed by Keys' speech. *Id.* at 1064 ("[I]n the wake of school shootings at Columbine, Santee, Newtown and many others, school administrators face the daunting task of evaluating potential threats of violence and keeping their students safe without impinging on their constitutional rights."). The threat of a shooting prompted the school in *Wynar* to involve the police because of its seriousness, an action Central did not feel compelled to take further supporting that the threats are not analogous. *Id.* at 1066. Therefore, Keys' speech likely did not interfere with the rights of other students.

Applicant Details

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Applicant Education

BA/BS From	**Cornell University**
Date of BA/BS	**May 2017**
JD/LLB From	**New York University School of Law** **https://www.law.nyu.edu**
Date of JD/LLB	**May 19, 2021**
Class Rank	**School does not rank**
Law Review/Journal	**Yes**
Journal(s)	**Annual Survey of American Law**
Moot Court Experience	**No**

Bar Admission

Prior Judicial Experience

Judicial Internships/Externships	**Yes**
Post-graduate Judicial Law Clerk	**No**

Specialized Work Experience

Recommenders

Samaha, Adam
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This applicant has certified that all data entered in this profile and any application documents are true and correct.

May 07, 2022

The Honorable Kenneth Karas
Charles L. Brieant, Jr. United States Courthouse
300 Quarropas Street, Room 533
White Plains, NY 10601-4150

Dear Judge Karas:

I am a litigation associate at Paul, Weiss, and I write to apply for a clerkship in your chambers for the 2024 term. I have focused my legal studies on the intersection of law, technology, and civil liberties, working with the ACLU and Policing Project during law school. My goal is to utilize this education to ensure that technology be harnessed for the public good, and I believe clerking in your chambers would be great mentorship for such a career.

Enclosed please find my resume, law school transcript, undergraduate transcript, and writing sample. My writing sample is a bench memorandum I wrote during my judicial internship at the U.S. Court of International Trade. My recommenders are Judge Gary Katzmann, ACLU Senior Staff Attorney Brett Kaufman, and Professor Adam Samaha. I was a judicial intern for Judge Katzmann, a clinical intern for Brett Kaufman, and a three-time student of Professor Samaha.

Thank you for your consideration.

Respectfully,

David Wechsler

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EDUCATION

NEW YORK UNIVERSITY SCHOOL OF LAW, New York, NY
J.D., *cum laude*, May 2021
Unofficial GPA: 3.65
Honors: *Ann Petluck Poses Memorial Prize* (designated by Dean for outstanding work in clinical course)
Annual Survey of American Law, Managing Editor
Activities: Suspension Representation Project, Advocate
Advanced Technology Law and Policy Clinic, Participant

CORNELL UNIVERSITY, Ithaca, NY
BS in Policy Analysis and Management, May 2017
Cumulative GPA: 3.94
Honors: Policy Analysis and Management Outstanding Senior
Activities: Teaching Assistant, Introduction to Policy Analysis
Cornell Daily Sun, Staff Writer

EXPERIENCE

PAUL, WEISS, RIFKIND, WHARTON & GARRISON LLP, New York, NY
Litigation Associate, October 2021-Present

POLICING PROJECT AT NYU LAW, New York, NY
Legal Fellow, August 2020-May 2021
Researched and presented on various legal and policy issues related to technology and policing, including facial recognition software, predictive policing, and gang databases.

GUNDERSON DETTMER STOUGH VILLENEUVE FRANKLIN & HACHIGIAN LLP, New York, NY
Summer Associate, Summer 2020 (Offer extended)
Rotated through the intellectual property and corporate groups.

AMERICAN CIVIL LIBERTIES UNION, New York, NY
Clinical Intern (Speech, Privacy, and Technology Project), August 2019-December 2019
Co-wrote litigation memo evaluating Fourth Amendment issues arising from law enforcement's use of a novel form of technology-enhanced surveillance.

THE HONORABLE GARY KATZMANN, U.S. COURT OF INTERNATIONAL TRADE, New York, NY
Judicial Intern, Summer 2019
Drafted questions for oral arguments, prepared bench memorandum, and aided in drafting opinion on case regarding an antidumping duty order as it relates to a consumer product. Provided feedback to clerks on draft opinions.

GOLDMAN, SACHS & CO, New York, NY
Investment Banking Division, Real Estate, Gaming and Lodging, June 2017-August 2018; **Intern**, Summer 2016

ADDITIONAL INFORMATION

Serve as mentor to high school student through iMentor program. New York State High School Golf Champion and NYC Marathon Finisher. Overly optimistic fan of New York sports teams (Mets / Jets / Knicks).

Name: **David E Wechsler**
Print Date: **07/02/2021**
Student ID: **N11255623**
Institution ID: **002785**
Page: **1 of 2**

New York University
Beginning of School of Law Record

Degrees Awarded

Juris Doctor 05/19/2021
School of Law
Honors: cum laude
Major: Law

Fall 2018

School of Law
Juris Doctor
Major: Law

Lawyering (Year)	LAW-LW 10687	2.5	CR
Instructor: Jacob Victor			
Torts	LAW-LW 11275	4.0	B
Instructor: Christopher Jon Sprigman			
Procedure	LAW-LW 11650	5.0	B
Instructor: John Sexton			
Contracts	LAW-LW 11672	4.0	B+
Instructor: Kevin E Davis			
1L Reading Group	LAW-LW 12339	0.0	CR
Topic: Decision by Algorithm			
Instructor: Katherine J Strandburg			

	AHRS	EHRS
Current	15.5	15.5
Cumulative	15.5	15.5

Spring 2019

School of Law
Juris Doctor
Major: Law

Lawyering (Year)	LAW-LW 10687	2.5	CR
Instructor: Jacob Victor			
Legislation and the Regulatory State	LAW-LW 10925	4.0	B+
Instructor: Adam M Samaha			
Criminal Law	LAW-LW 11147	4.0	A
Instructor: Rachel E Barkow			
1L Reading Group	LAW-LW 12339	0.0	CR
Topic: Decision by Algorithm			
Instructor: Katherine J Strandburg			
Survey of Intellectual Property	LAW-LW 12469	4.0	B
Instructor: Christopher Scott Hemphill			
Financial Concepts for Lawyers	LAW-LW 12722	0.0	CR

	AHRS	EHRS
Current	14.5	14.5
Cumulative	30.0	30.0

Fall 2019

School of Law
Juris Doctor
Major: Law

Art Law	LAW-LW 10122	4.0	A-
Instructor: Amy M Adler			
Constitutional Law	LAW-LW 11702	4.0	A-
Instructor: Adam M Samaha			
Technology Law and Policy Clinic	LAW-LW 12148	3.0	A
Instructor: Brett Kaufman			
Jason Michael Schultz			
Technology Law and Policy Clinic Seminar	LAW-LW 12149	3.0	A
Instructor: Brett Kaufman			
Jason Michael Schultz			

	AHRS	EHRS
Current	14.0	14.0
Cumulative	44.0	44.0

Spring 2020

School of Law
Juris Doctor
Major: Law

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Due to the COVID-19 pandemic, all spring 2020 NYU School of Law (LAW-LW.) courses were graded on a mandatory CREDIT/FAIL basis.
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Negotiation	LAW-LW 11642	3.0	CR
Instructor: Dina R Jansenson			
Property	LAW-LW 11783	4.0	CR
Instructor: Shitong Qiao			
Income Taxation	LAW-LW 11994	4.0	CR
Instructor: Laurie L Malman			
Supreme Court Seminar	LAW-LW 12064	2.0	CR
Instructor: Troy A McKenzie			
Yaira Dubin			
Sina Kian			

	AHRS	EHRS
Current	13.0	13.0
Cumulative	57.0	57.0

Fall 2020

School of Law
Juris Doctor
Major: Law

Criminal Procedure: Fourth and Fifth Amendments	LAW-LW 10395	4.0	A
Instructor: Stephen J Schulhofer			
First Amendment Seminar	LAW-LW 11824	2.0	A
Instructor: Burt Neuborne			
Fashion Law and Business	LAW-LW 12131	3.0	A
Instructor: Douglas Arthur Hand, Jr.			
Ethics in Government: Investigation and Enforcement	LAW-LW 12211	2.0	B+
Instructor: Ellen N Biben			
Linda Lacewell			
Constitutional Interpretation Seminar	LAW-LW 12253	2.0	A
Instructor: Adam M Samaha			

	AHRS	EHRS
Current	13.0	13.0
Cumulative	70.0	70.0

Spring 2021

School of Law
Juris Doctor
Major: Law

Corporations	LAW-LW 10644	5.0	A
Instructor: Marcel Kahan			
Federal Courts and the Federal System	LAW-LW 11722	4.0	A
Instructor: Helen Hershkoff			
Advanced Technology Law and Policy Clinic	LAW-LW 12429	3.0	A
Instructor: Brett Kaufman			
Jason Michael Schultz			
Advanced Technology Law and Policy Clinic Seminar	LAW-LW 12430	2.0	A-
Instructor: Brett Kaufman			
Jason Michael Schultz			

	AHRS	EHRS
Current	14.0	14.0
Cumulative	84.0	84.0

Staff Editor - Annual Survey of American Law 2019-2020
Managing Editor - Annual Survey of American Law 2020-2021
Ann Petluck Poses Memorial Prize

Name:	**David E Wechsler**
Print Date:	**07/02/2021**
Student ID:	**N11255623**
Institution ID:	**002785**
Page:	**2 of 2**

End of School of Law Record

May 07, 2022

The Honorable Kenneth Karas
Charles L. Brieant, Jr. United States Courthouse
300 Quarropas Street, Room 533
White Plains, NY 10601-4150

Dear Judge Karas:

David Wechsler is applying for a clerkship in your chambers, and I write to recommend him enthusiastically and without reservation. David is a standout legal thinker with an impressive range of skills, and he is exceptionally well-prepared to be a superb law clerk. Nearly no other applicant enjoys the same collection of analytical precision, poise, and ability to work cooperatively in a team. David will be an unswervingly dedicated and able law clerk. I respectfully recommend that you interview and hire him before someone else does.

David was a student of mine in two large classes plus a seminar. He was terrific in each setting, and got even better each year. In my course for first-year students, Legislation and the Regulatory State, we examine technical doctrine as well as systemic legal questions. We study how courts grapple with statutory language, legislative history, canons of construction, agency regulations, and constitutional claims within particular case settings—yet we also explore how various legal institutions interact with each other and the rest of society. Only exceptionally adept students, such as David, can achieve thorough understandings of both the technical legal elements and the system-wide facets of the course. David was remarkably comfortable with the issues from the start. He was an unerringly prepared and wonderfully reliable participant throughout the semester. All of the above observations hold for his work in my Constitutional Law course during the following autumn. The complexity level in that course is higher still, given the ground that we cover. We study not only constitutional structure and interpretive methods, but also a mix of rights claims. David responded with hard work, a constructive attitude, and remarkable thoughtfulness. His ability to communicate sharp ideas in a welcoming manner was much appreciated.

In our seminar on Constitutional Interpretation during the present academic year, I was able to spend more time with David's ideas about law. The seminar is capped at twenty students and is divided into two parts: foundational ideas about constitutional interpretation, then cutting-edge scholarship on a range of narrower topics. The first part includes short student writings on classic works of scholarship as source material for classroom discussions; the second part involves live discussions with guest authors. David excelled in both parts. His ideas were sophisticated and incisive, and he repeatedly volunteered probing questions for our guest scholars. In his final paper, David considered the developing theory and practice of originalism over the last several decades, and the sometimes surprising connections to progressive or liberal causes during recent years. His writing demonstrated broad knowledge and daring analytical effort, in exploring claims that our constitutional system has become preoccupied with "effective labeling" and has allowed the text to become a "springboard for fringe ideas." I valued greatly David's ability to refine his thinking over time, and to join together his ideas about law, interpretive methods, and broader forces in society beyond courtrooms. He received the top score in the seminar for his participation and writings combined.

As David's electronic record indicates, my experience with him is not exceptional. David has excelled in a range of law school courses and employment experiences. He will start his career as an attorney this coming autumn at one of the nation's leading law firms, he already has developed a special acuity with intellectual property, and he interned with both the ACLU and a judge who is a leading light on the Court of International Trade. Add to all of that David's experiences with banking, policing, and technology issues, he stands out for his dedication and breadth of commitment to law and its proper role in social life. He will take a clerkship as seriously as he has conducted his other pursuits, and he will stand out in that position as well.

Perhaps less obvious from the file is David's solid temperament and relaxed personality. Conscientious and responsive, diligent and quick, David looks for ways to improve everyone's performance. I saw this in the classroom with his fellow students, and in his work as a lead organizer for a law journal symposium on gun regulation reform in which I will participate this spring. David is friendly, intelligent, and efficient—a welcome combination that is, perhaps, too difficult to find in young lawyers. He can juggle many tasks and topics while treating everybody around him with respect. Anyone would be thrilled to join David in the workplace.

As a former law clerk, as an attorney, and as a law professor, I understand the important duties and responsibilities associated with a clerkship. In my judgment, David Wechsler has all of the intelligence, training, skill, and dedication to be a truly excellent law clerk. I hope that you will be convinced of David's ability and commitment to serving your court, and I respectfully recommend that you interview and hire him.

Please contact me at the cellphone number below if I can be of further assistance.

Sincerely,
Adam M. Samaha
773 355 1016 (cell)

AMERICAN CIVIL LIBERTIES UNION FOUNDATION

National Office
125 Broad Street, 18th floor
New York NY 10004
(212) 549-2500
aclu.org

September 3, 2020

RE: David Wechsler, NYU Law '21

Your Honor:

It is my pleasure to strongly recommend David Wechsler for a clerkship in your chambers. In my eight years as an attorney for the American Civil Liberties Union and my six years as a teacher in the NYU Technology Law & Policy Clinic, I have had the privilege of supervising an extraordinarily talented group of legal fellows, interns, and law students. Among them, David stands out, particularly for his creative legal thinking and outstanding legal writing abilities. Based on these qualities and my own past experiences as a judicial clerk for three different federal judges, I am confident that he has what it takes to be a wonderful law clerk.

During David's semester in the clinic under my supervision, he very much impressed me and my ACLU colleagues with a truly fantastic project. David and a partner were assigned to work with ACLU staff attorneys to prepare a full litigation memorandum concerning a potential mass aerial surveillance program over an American city. Specifically, David conducted factual and legal research and reconsidered precedential opinions addressing aerial surveillance in light of the Supreme Court's recent decision in *Carpenter v. United States*, 138 S. Ct. 2206 (2018). As fortune would have it, just weeks after David and his partner put the finishing touches on their memorandum—which addressed standing, state action under 42 U.S.C. § 1983, and the merits of Fourth and First Amendment claims, among other smaller issues—the City of Baltimore voted to implement a system just like the one their memorandum had contemplated. Because of the excellent work David and his partner did in putting together a comprehensive 50-page litigation plan, the ACLU was poised to file a lawsuit on an unusually fast timeline, and we thanked the students publicly for their efforts at the end of our initial brief.

David's assignment was a real challenge. It required creative approaches to distinguishing old, seemingly on-point precedent holding various types of aerial surveillance of public places unconstitutional. It required a deepread of (and many in-depth discussions with ACLU staff attorneys about) *Carpenter*, in addition to recent judicial and academic applications of it, and a projection of how its conclusions could support claims in our potential lawsuit. And it required an analytical approach that was broad enough to cover various potential aerial surveillance systems without

knowing which, if any, would ultimately be at issue. Despite these challenges, the work was an unqualified success.

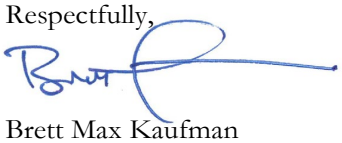
Moreover, David had very little familiarity with Fourth Amendment law (and ACLU positions on those issues) coming into the project, but was able to prepare himself for deep engagement in a relatively short time frame—no doubt, the ideal type of training for a future law clerk. He threw himself into academic scholarship and reams of old cases to first think through, outline, and discuss our potential arguments, then to draft fair-handed and honest analysis evaluating the strengths and weaknesses of our arguments. Not only did he get up to speed quickly, but he became fluently conversant in the issues, and participated in complex discussions with his partner, me, and my ACLU colleagues about the arguments we were considering, often challenging our assumptions or bringing to light complications or arguments we hadn't fully considered. Building off of this experience, he applied to become and was accepted as a year-long legal fellow in the NYU School of Law's Policing Project beginning next fall.

As a former appellate and district court clerk, I know how much a top-notch writing ability—clarity, organization, thoroughness, and readability—is prized in chambers. Having supervised David on a complex writing project, I am confident he is a smart bet to produce organized, thoughtful, high-quality work on a rigorous timeline as a clerk. His drafts were carefully argued and thought-through, not to mention cleanly presented and accurately cited (no doubt helped by his experience on the *Annual Survey of American Law*). In addition, I was especially struck by David's receptiveness to criticism, and his advanced ability to productively implement comments from me and others. Having to defend his work to subject-matter experts at the ACLU as a professional colleague, rather than simply a student, was an experience that was at once humbling and confidence-building for David. I know from our private supervisory conversations that he learned tremendously from these experiences, which made him extremely excited about becoming a lawyer, and about the unique and rewarding experience of being a law clerk.

Finally, our clinic does not focus only on output; rather, we consistently emphasize process. David was consistently engaged in our class discussions about lawyering, ethics, and the interaction of law and technology. In particular, he led a quite memorable and well-prepared session about various forms of algorithmic decision making (including a fair assessment of their benefits and perils), with concrete examples, excellent classroom prompts, and a knack for facilitating discussion. Little wonder, then, that David was one of the most active and helpful contributors to other students' workshops of their own clinical projects. He regularly demonstrated that he had deeply engaged with their work and had put in time to think about ways to improve it, all while remaining modest and even-keeled. These are the marks of an excellent colleague, and David was indeed respected and admired by his colleagues and his teachers.

Thank you for your consideration of David. I strongly recommend that you hire him as your clerk. If I can offer any further information or be of assistance in any way, please do not hesitate to contact me by email or phone.

Respectfully,



Brett Max Kaufman
Senior Staff Attorney, ACLU Center for Democracy
Adjunct, NYU Technology Law & Policy Clinic
125 Broad Street—18th Floor
New York, New York 10004
212.549.2603 | bkaufman@aclu.org

United States Court of International Trade
One Federal Plaza
New York, NY 10278

CHAMBERS OF
Gary S. Katzmann
JUDGE

Dear Judge,

I write on behalf of David Wechsler, who has applied to your Chambers for a law clerk position. David worked for me as an intern in the summer of 2019. I am pleased to support his application with great enthusiasm and without reservation. Indeed, I have encouraged him to seek a clerkship. He will be an outstanding law clerk.

I write with the perspective of some 16 years on the bench, serving twelve years as an Associate Justice on the Massachusetts Appeals Court and, now nearly four years as a Judge on the United States Court of International Trade. David graduated from Cornell University in 2017, with a B.A. in Policy Analysis and Management (and a distinguished 3.94 GPA). Prior to law school, he worked for more than one year in the Investment Banking Division of Goldman, Sachs and Company, managing due diligence as an advisor to clients in complex sales. In 2018, David entered the New York University School of Law.

In the summer of 2019, it was my good fortune that David worked for me as a judicial intern. That his product was outstanding is all the more impressive because he came to Chambers with having just completed his first year of law school. I assigned him a very challenging international trade case, requiring navigation of a complex administrative record, analyzing

numerous briefs, and mastering a myriad of difficult issues of substantive law, jurisdiction and procedure. Extraordinarily conscientious, David was totally thorough in his research and writing – indeed, going above and beyond. His college and work experience no doubt contributed to his comfort with detail and complex records and arguments. He showed tremendous capacity to parse complicated questions. He did an excellent job drafting questions that were sent to the attorneys in advance of oral argument. He also wrote a comprehensive bench memorandum that set out the questions carefully and in a balanced way addressed the positions of the litigants. David writes clearly and concisely. His memorandum was very useful to me as I considered how the case should be adjudicated. I truly valued our discussions.

Wonderfully efficient, David is a self-starter who has the quiet confidence to ask questions. He embraced suggestions and welcomes feedback. He will turn around a draft without delay. I was so impressed with David's work that I asked him to review drafts in other cases not his own. Earnest and humble, an engaging conversationalist, collegial and a true team player, David quickly became a valued member of Chambers. We were all sorry to see him leave when the summer ended.

Quite apart from his academic excellence in law school, David has taken on many activities that will only enhance his work as a law clerk. He has been a research assistant for a professor and has been named Managing Editor of Solicitations for the Annual Survey of American Law. I have been impressed by David's hope that he can apply his legal training for the betterment of the community. That is more than an aspiration, as demonstrated by his involvement as an advocate for the Suspension Representation Project on behalf of students in New York City public schools, and by his service during the coming year as a Student Legal Fellow for the NYU Policing Project.

It does not take long in conversation with David to understand that he has wide-ranging interests and curiosity. He is also well-rounded– not simply a sports fan, he is in fact a high school golf champion and participant in NYU's Deans' Cup Basketball Team. His enthusiasm lifts the spirits of all around him.

I am confident that David will be a leader in the years ahead in the best and broadest traditions of the legal profession. I think that his will be an outstanding career. I am pleased to recommend David Wechsler for a judicial clerkship with great enthusiasm and without reservation. I am happy to chat further. Please do not hesitate to contact me at (212) 264-1757.

Very truly yours,

Gary S. Katzmann

Judge

My writing sample is an excerpt from a 2019 bench memorandum sent to the Honorable Judge Gary S. Katzmann during my judicial internship at the U.S. Court of International Trade. In the memorandum I recommend the scope of an antidumping duty order for corrosion resistant steel excludes a consumer product that incorporates such steel in its manufacturing process. I changed the names of the parties and deleted several footnotes for brevity. Judge Gary S. Katzmann has approved the use of this bench memorandum as a writing sample.

NATURE OF THE CASE

This case involves issues of proper scope interpretation. Plaintiff Company X ("Company X") imports finished pool kits and pool walls (collectively, "pool products") from Canada to the United States that are ready to construct into above ground pools with no further modification by customers. Company X requested a scope inquiry clarifying that its pool products, partially made from corrosion resistant steel ("CORES"), did not fall within the antidumping duty order for CORES from Italy and the People's Republic of China ("China"). After reviewing Company X's request, the U.S. Department of Commerce ("Commerce") determined that Company X's pool products were mixed-media items -- products that are merely combinations of subject and non-subject merchandise -- and no published guidance existed to overcome the presumption that mixed-media items fall within the scope of Commerce's Final Order ("Order"). Thus, Company X's products were subject to the antidumping duty. Company X now challenges the scope ruling of Commerce, arguing that the plain language of the Order does not cover downstream items like their pool products and a mixed-media analysis does not apply. Thus, they should not be subject to the antidumping duty order.

JURISDICTION AND STANDARD OF REVIEW

The court has jurisdiction over this action pursuant to 28 U.S.C. § 1581(c). The standard of review in this action is set forth in 19 U.S.C. § 1516(a)(1)(B)(i): "[t]he court shall hold unlawful any determination, finding or conclusion [by Commerce] found . . . to be unsupported by substantial evidence on the record, or otherwise not in accordance with law." Substantial evidence includes "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." Universal Camera Corp. v. NLRB, 340 U.S. 474, 477 (1951) (quoting Consol. Edison Co. of New York v. NLRB, 305 U.S. 197, 229 (1938)). In undertaking this analysis, the

court grants "'significant deference to Commerce's interpretation of a scope order.'" Mid Continent Nail Corp. v. United States, 725 F.3d 1295, 1300 (Fed Cir. 2013) ("Mid Continent") (quoting Global Commodity Group LLC v. United States, 709 F.2d 1134, 1138 (Fed Cir. 2013)). But to support its findings, Commerce must also "explain the standards that it applied and demonstrate a rational connection between the facts on the record and the conclusions drawn." Matsushita Elec. Indus. Co. v. United States, 750 F.2d 927, 933 (Fed. Cir. 1984).

BACKGROUND

A. Legal and Regulatory Framework of Scope Determinations Generally

"When participants in a domestic industry believe that competing foreign goods are being sold in the United States at less than their fair value, they may petition Commerce to impose antidumping duties on importers." Mid Continent, 725 F.3d at 1297–98 (citing 19 U.S.C. § 1673a(b)). If Commerce determines that "the subject merchandise is being, or is likely to be sold in the United States at less than its fair value," and the ITC determines a domestic industry is injured as a result, Commerce issues an antidumping duty order. See 19 U.S.C. § 1673d(a), (b). Once the order is issued, importers may ask for scope rulings, seeking to clarify the scope of the order as it relates to their particular product. See generally 19 C.F.R. § 351.225.

Commerce often must determine whether a product is included within the scope of an antidumping duty order because it necessarily writes scope language in general terms. See 19 C.F.R. § 351.225(a). Commerce's determinations concerning a particular product are made in accordance with its regulations. See 19 C.F.R. § 351.225. Although "Commerce is entitled to substantial deference with regard to its interpretation of its own antidumping duty orders," King Supply Co. v. United States, 674 F.3d 1343, 1348 (Fed Cir. 2012) (citing Tak Fat Trading Co. v. United States, 396 F.3d 1378, 1382 (Fed Cir. 2005)), "the question of whether the unambiguous

terms of a scope control the inquiry, or whether some ambiguity exists, is a question of law" that the court reviews de novo. Meridian Prods., LLC v. United States, 851 F.3d 1375, 1382 (Fed Cir. 2017) (citing Alleghany Bradford Corp. v. United States, 28 CIT __, __, 342 F. Supp. 2d 1172, 1183 (2004)). "The question of whether a product meets the unambiguous scope terms presents a question of fact reviewed for substantial evidence." Novosteel SA v. United States, 284 F.3d 1261, 1269 (Fed Cir. 2002)).

The framework for determining the scope of an order is set forth in the Department's regulations. See 19 C.F.R. § 351.225(k). The court has established that Commerce should engage in a three-step analysis to determine whether merchandise falls within the scope of an order, providing:

> First, Commerce examines the language of the order at issue. If the terms of the order are dispositive, then the order governs . . . Second, if the terms of the order are not dispositive, Commerce must then determine whether it can make a determination based upon the factors listed in 19 C.F.R. § 351.225(k)(1). . . . These factors are "the descriptions of the merchandise contained in the petition, the initial investigation, and the determinations [of Commerce] (including prior scope determinations) and the Commission." 19 C.F.R. § 351.225(k)(1). . . . If a Section 351.225(k)(1) analysis is not dispositive, Commerce then applies the five "Diversified Products" criteria as specified in 19 C.F.R. § 351.225(k)(2).

Polites v. United States, 35 CIT __, __, 755 F. Supp. 2d 1352, 1354–55 (2011).

The Federal Circuit has held that for the plain meaning in a scope determination to be dispositive, it must be "supported by substantial evidence, considering the § 351.225(k)(1) criteria, in view of the record as a whole -- including evidence that [certain merchandise] was excluded from Commerce's and the Commission's investigations." A.L. Patterson, Inc. v. United States, 585 Fed. Appx. 778, 784 (Fed Cir. 2014) ("Patterson"). The Federal Circuit continued, "[e]ven when merchandise is facially covered by the literal language of the order, it may still be outside the scope if the order can reasonably be interpreted so as to exclude it." Id.

B. Legal Framework for Scope Rulings Involving Mixed-Media Items

Mixed-media items are items in which otherwise subject merchandise is packaged and imported together with non-subject merchandise. Whether a mixed-media item falls within the scope of an order is subject to a specialized analysis distinct from the traditional scope analysis discussed above. While the mixed-media analysis overlaps with a traditional scope analysis, it is used as the scope test only when Commerce must determine whether potentially subject-merchandise included within a mixed-media item is subject to an order. However, before Commerce engages in a "mixed-media" analysis, it must make a threshold inquiry: whether the item as imported in its assembled condition qualifies as a mixed-media item in the first instance. See Maclean Power, L.L.C. v. United States, 43 CIT __, __, 359 F. Supp. 3d 1367. The Federal Circuit defines "mixed-media" in the context of scope rulings as a set of products that are "merely a combination of subject and non-subject merchandise, and not a unique product." Walgreen Co. v. United States, 620 F.3d 1350 (Fed Cir. 2010). Helpful in this initial phase is evaluating whether the subject merchandise can be identified and utilized separately from the mixed-media item. Id. If this initial inquiry is satisfied, Commerce then engages in a two-step framework the Federal Circuit provided in Mid Continent governing Commerce's scope analysis of mixed-media items.[1]

C. Factual and Procedural History of the CORES Order

[1] First, Commerce determines whether the potentially subject merchandise included within the mixed-media item is within the literal terms of the antidumping duty order. Mid Continent, 725 F.3d at 1302. In the second step, if neither the text of the order nor its history "indicate [ ] that subject merchandise should be treated differently on the basis of its inclusion within a mixed-media item," then "a presumption arises that the included merchandise is subject to the order." Id. at 1304. The presumption that the mixed-media item is within the scope of the order applies unless Commerce identifies "published guidance issued prior to the date of the original antidumping order [ ] that provides a basis for interpreting the order contrary to its literal language." Id. at 1304

United States Steel Corporation, Nucor Corporation, Steel Dynamics Inc., California Steel Industries, ArcelorMittal USA LLC, and AK Steel Corporation ("Petitioners") filed antidumping and countervailing duty petitions on June 3, 2015 with Commerce and the ITC requesting the initiation of investigations with respect to imports of certain CORES products from China, the Republic of Korea, India, Italy, and Taiwan ("Petition"). See Certain Corrosion-Resistant Steel Products from China, India, Italy, Korea, and Taiwan: Determinations, 81 Fed. Reg. 47,177 (July 20, 2016) ("ITC Investigation"). On June 30, 2015, Commerce initiated the antidumping and countervailing duty investigations on CORES products from these areas, and on June 2, 2016, Commerce published determinations. Id. On July 15, 2016, the ITC issued a notice of its affirmative finding that an industry in the United States is materially injured by reason of imports of certain CORES products from China, India, Italy, Korea, and Taiwan. Id. On July 25, 2016, Commerce issued antidumping and countervailing duty orders on these products. Order, 81 Fed. Reg. at 48,391, 48,389, App. I. The scope of the Order covers, in pertinent part, "steel products, either clad, plated, or coated with corrosion resistant metals." Id.

D. Factual and Procedural History of this Case

The products under consideration in Company X's scope ruling request are finished pool products made of steel and non-steel components. While subject CORES from China and Italy is used to produce part of Company X's pool products, the steel undergoes further processing and manufacturing in Canada. Pl.'s Br. at 2. Company X explains that, as a result of its Canadian manufacturing, the steel satisfies the requisite tariff shift from subheading 7210.70 (flat-rolled products of steel) to 9506.99.550 (swimming pools and parts thereof) and thus is a Canadian origin product for customs purposes. Id. Company X's pools are imported as a finished goods kit. Id. at 3. When imported (in multiple boxes due to size constraints), the pools have all the parts

necessary to be assembled into an above ground pool. Pl.'s Br. at 2; Def.'s Br. at 5. Each pool is packaged together and exported on the same U.S. Customs and Border Protection ("CBP") form 7501. Id.

***

On November 28, 2017, Company X filed a scope ruling request with Commerce to determine whether its finished pool products are subject to the Order. On May 10, 2018, Commerce issued a scope ruling to Company X stating that its pool products fell within the scope of the Order. Commerce reasoned that its practice for evaluating products in which potentially subject merchandise is included in a larger product is governed by the Federal Circuit's decision in Mid Continent and that the inclusion of CORES in Company X's pools did not bring it outside the scope of the Order. See Final Scope Ruling. Plaintiff Company X filed a complaint against the United States ("the Government") challenging Commerce's final scope determination on July 16, 2018.

DISCUSSION

I. Company X's Pool Products Do Not Fit Within the Plain Language of the Scope of the Order

a. The Scope of the Order Does Not Cover Downstream Products

Company X argues that the Department's Final Scope Ruling failed to consider the plain language of the Order in applying the antidumping duty for CORES from China and Italy on its finished pools and finished pool walls because the pool products were neither specifically included nor reasonably interpreted to be included under the Order, as required by Duferco Steel, Inc. v. United States ("Scope orders may be interpreted as including subject merchandise only if they

contain language that specifically includes the subject merchandise or may be reasonably interpreted to include it."). 296 F.3d 1087, 1089 (Fed. Cir. 2002)). Pl.'s Br. at 10. Thus, Commerce's determination was not based upon substantial evidence or otherwise in accordance with law. Id.

Company X draws a parallel to A.L. Patterson, Inc. v. United States, 585 Fed. Appx. 779 (Fed. Cir. 2014), arguing that fully finished end-products, like its pools and pool walls, were never intended to be included by the Petitioners as part of the scope of the investigation. Pl.'s Br. at 16. In Patterson, the Federal Circuit considered whether the scope of an order includes merchandise facially covered by the terms of the antidumping order, but which had not been a part of the underlying investigation. The court ultimately rejected Commerce's determination that steel *coil* rods imported from China fell within the scope of an antidumping order on steel rods because coil rods were a distinct product in a different domestic industry than the steel *threaded* rods the ITC investigated. Id. Instead, evidence showed that Patterson's coil rods were physically distinguishable from the steel threaded rods that were the focus of the original petition, the petition neither mentioned coil rods nor any of the uses of coil rods, no domestic producers of coil rods were included in the description of the domestic threaded rod industry, and there was no evidence that at the time of the petition coil rods were interchangeable with threaded rods or intended to be subject to the duties. Id.

Company X points out that like in Patterson, there is nothing in the record of the original investigation that demonstrates that fully finished end-products were intended to be included by Petitioners as part of the scope of the investigation. Pl.'s Br. at 16. This argument is persuasive when examining the language of the Order. While the Order thoroughly details the chemical content of the subject merchandise and intended uses, nowhere does it state that the scope covers

finished products such as cars, appliances or pools. In Patterson, review of the record as a whole included evidence that coil rods were excluded from the ITC and Commerce's investigations. Patterson, 585 Fed Appx. at 784. Because no evidence showed that when the petition was filed it intended to include or mention coil rods, the record did not support a finding that they were covered by the Order. Similarly, Company X argues that because the record here evinces no evidence of consideration of downstream products within the Petition filed with Commerce or the ITC investigation, they are reasonably interpreted to be excluded from the scope of the Order. Pl.'s Br. at 17. Company X's argument is buttressed by the producers of CORES filing the Petition, not domestic producers of above ground pools. As Company X highlights, the entities affected by the purported dumping are those who produce the raw input of CORES, not finished products. Pl.'s Reply at 11–12. Furthermore, the ITC questionnaires for the preliminary phase of the original investigation only collected pricing data for mill sheet products, not downstream items. See ITC Investigation. Thus, Commerce's determination that Company X's product fell within the scope of the Order is not supported by substantial evidence.

The Government tries to distinguish Patterson by pointing out that in this case, the CORES used in Company X's finished pool products is specifically covered by the Order, whereas in Patterson no part of the coil rod was under the Order. The Government contends that because the CORES components fall within the plain language of the scope of the Order, considering other sources in determining the plain meaning of the Order is inconsistent with Mid Continent's guidance that Commerce should consider the (k)(1) sources as part of the first step of a mixed-media analysis only if it identifies an ambiguity in an Order's plain language. Def.'s Br. at 17. Here, as the Government argues, Company X's pools fall directly within the language of the Order, because Company X's pool walls undergo the "further processing" that the Order encompasses.

Def.'s Br. at 18 (citing the Order: "Subject merchandise also includes corrosion-resistant steel that has been further processed in a third country, including but not limited to annealing, tempering, painting, varnishing, trimming, cutting, punching and/ or slitting or any other processing that would not otherwise remove the merchandise from the scope of the Order"). But the Government does not explain why the pool walls were merely processed as opposed to substantially transformed, as Company X argues. Instead, they simply state that "the further processing Company X's CORE[S] components undergo is not to such an extent that the CORE[S] becomes physically distinguishable as a separate product or is transformed into a different product, like the steel threaded rods in Patterson." Def.'s Br. at 18. However, in Patterson the coil rods were not considered separate from the scope of the Order because of their physical attributes, but instead because it was a distinct product occupying a different market from the thread rods. So too here are the pool walls a distinct product. Thus, the Government's argument that the "processing" Company X's CORES undergoes keeps it within the scope of the Order is unavailing.

Furthermore, Company X demonstrates that downstream products were never considered as part of the ITC's injury analysis despite 19 U.S.C. § 1673 requiring an injury determination prior to the imposition of antidumping duties. Instead, the ITC's injury investigations were focused on pricing data for CORES and other raw inputs, not fully finished products like Company X's pools and pool walls. See Company X's Initial Scope Request, P.R. 1, at 9; P.R. 4, at Att. 7. Nowhere in the Government's brief does it address the critical requirements of an injury determination. Company X persuasively argues that allowing Commerce to include downstream products would "frustrate the purpose of the antidumping laws because it would allow Commerce to assess antidumping duties on products intentionally omitted from the ITC's injury investigation." Pl.'s Reply at 15 (quoting Wheatland Tube Co. v. United States, 161 F.3d 1365, 1371 (Fed. Cir. 1998)).

While one could imagine an argument that domestic producers of CORES are injured by the use of CORES from China and Italy as an input for Company X's pools, the Government does not consider this possibility, nor did Commerce address it. Instead, its briefing to this court is devoid of any evidence on the record of injury to a domestic industry or sales at less than fair value. Thus, Commerce's decision is not in accordance with the law.

Finally, Company X compares the minimal manufacturing process required for CORES to the elaborate process its pools necessarily go through as evidence that the pools are not subject to the Order. Pl.'s Br. at 17. While such a difference is not dispositive, it is further evidence that the Order did not consider fully finished downstream products within its scope. Furthermore, as with the injury determination, the Government fails to address these differences. See generally Def.'s Br.

The Government further contends that the Petition and ITC Final Determination specifically discussed the use of CORES in many applications, including construction applications similar to Company X's use (CORES is used "in the manufacture of automobile bodies, in appliances, and in commercial and residential buildings and other construction applications."). Final Scope Ruling. Thus, the Government argues Commerce reasonably determined that the (k)(1) sources indicate that it was contemplated during the investigations that CORES would continue to be subject merchandise if included within larger products like Company X's finished pool products. Def.'s Br. at 15–16. However, the Government relies on no authority for the proposition that discussing end-uses of products includes those end-uses within the scope of the order. Without such authority, the passing references to the type of finished products produced from subject CORES cannot be interpreted as proof that the parties contemplated that finished products would be subject to the scope of the Order. Furthermore, accepting such an argument may lead to absurd

and perverse outcomes. If the court were to adopt Commerce's interpretation of the Order to include all downstream products, then an array of finished consumer products which includes CORES inputs would be covered by the Order. Such products covered would include automobile bodies, automobiles and trucks, appliances, industrial equipment, and more. Surely this result is not what Commerce intended when drafting the Order.

***

d. The Government Does Not Explain Why Company X's Products Are Mixed-Media Products, Subject to the Mid Continent Analysis

The Government's main argument relies on Mid Continent, 725 F.3d 1295 and states that as a mixed-media item, Company X's pools fall under the scope of the Order based on the two-step framework laid out by the Federal Circuit. Def.'s Br. at 21–22. In Mid Continent, the court considered whether subject merchandise (nails) packaged and imported with non-subject merchandise (assorted household tools) as a part of a mixed-media tool kit was subject to an antidumping order that in terms covered the nails. The court held that the nails remained within the scope of the order yet noted "Commerce has historically treated the answer to this question as depending on whether the mixed-media item is treated as a single, unitary item, or a mere aggregation of separate items." Id. at 1298. In this case, Commerce did not take the initial step of proving that the pool walls are not unique products. Mixed-media items, as defined by Walgreen Co. v. United States, are a set of products that are "merely a combination of subject and non-subject merchandise, and not a unique product." 620 F.3d 1350, 1355 (Fed. Cir) (emphasis added). Walgreen dealt with whether the packaging of tissue paper in gift bag sets took the tissue paper out of the scope of the Final Order for cut-to-length sheets of tissue paper. Id. The Walgreen court emphasized the tissue paper retained its individual character despite being packaged with the rest

of the gift bag sets in holding that the gift sets were not unique products and the tissue paper was subject to the order. Id. at 1357. Such an analysis makes intuitive sense. When a product subject to an antidumping duty order retains its individual character, the underlying purpose behind the order is not defeated. Here, however, the Government never determines Company X's products are "merely a combination of subject and non-subject merchandise" before applying Mid Continent.

Company X brings to our attention a case this court recently decided -- Maclean Power -- which dealt with a similar issue. 43 CIT __, __, 359 F. Supp. 3d 1367 ("Maclean"). In Maclean, this court determined that helical spring lock washers ("HSLW") incorporated within pole line hardware fell outside the scope of the HSLW order. Id. In so doing, this court warned that "Commerce put the cart before the horse" and held that "[b]efore applying the various guidance in Mid Continent, Commerce was first required to address the pole line hardware in its assembled condition." Maclean Power 43 CIT __, __, 359 F. Supp. 3d at 1372, N.3. The court distinguished the HSLW from the nails in Mid Continent by noting:

> "[A] tool box retains its essential character when it excludes nails, as do the nails by themselves. But the HSLWs at issue here are not alleged to be imported for use in anything other than the pole line hardware. The pole line hardware cannot perform their intended functions without the HSLWs, or the remainder of their components functioning together."

Id. at 1373.

Thus, just as the HSLW lost its essential function when incorporated into the pole line hardware, so too does the subject CORES when incorporated into Company X's pool products. Even if Commerce's Mid Continent analysis was sufficient to show that Company X's product fell within the order, its determination was still not in accordance with law because it did not address whether its product was a mixed-media item or unique product in the first place. Company X also

demonstrates that Commerce's past precedent includes finding that subject merchandise incorporated into a larger product constitutes non-subject merchandise, see e.g., Final Scope Determination Regarding Refrigerant Distributor Assemblies Manufactured and Imported by Danfoss LLC (Nov. 10, 2016) (holding that the order covers pipe and tube, but does not extend to further manufactured composite goods consisting of copper pipe and tube combined with other non-copper pipe and tube elements). Such a ruling provides further evidence that downstream products, distinct from mixed-media items, do not fall within the Order.

In its brief, the Government does not discuss the "unique product" distinction anywhere. By simply jumping into the mixed-media analysis, the Government fails to explain why Company X's pools should be considered a mixed-media item or grapple with the precedent laid down in Walgreen or Maclean. In this case, the record evidence shows that Company X's pools and pool walls are single unitary items, not mixed-media goods consisting of independently packaged items sold together as a set. Thus, by failing to consider the record as a whole before applying Mid Continent, Commerce's Final Scope Ruling was unsupported by substantial evidence in the underlying record.

Applicant Details

First Name	**Abraham**
Last Name	**Weiss**
Citizenship Status	**U. S. Citizen**
Email Address	**aw3248@columbia.edu**
Address	**Address** Street **1075 Ocean Parkway, 1G** City **Brooklyn** State/Territory **New York** Zip **11230** Country **United States**
Contact Phone Number	**9294418381**

Applicant Education

BA/BS From	**Fairleigh Dickinson University**
Date of BA/BS	**September 2019**
JD/LLB From	**Columbia University School of Law** **http://www.law.columbia.edu**
Date of JD/LLB	**May 18, 2022**
Class Rank	**School does not rank**
Law Review/Journal	**Yes**
Journal(s)	**Columbia Law Review**
Moot Court Experience	**Yes**
Moot Court Name(s)	**Stone Moot Court** **Foundation Moot Court**

Bar Admission

Prior Judicial Experience

Judicial Internships/Externships	**Yes**

Post-graduate Judicial Law Clerk	**No**

Specialized Work Experience

Recommenders

Merrill, Thomas
tmerri@law.columbia.edu
212-854-9764
Katz, Avery
ak472@columbia.edu
212-854-0066
Talley, Eric
etalley@law.columbia.edu
Shechtman, Paul
paul.shechtman@bracewell.com
9177965123

This applicant has certified that all data entered in this profile and any application documents are true and correct.

Avi Weiss
1075 Ocean Parkway 1G
Brooklyn, NY 11230
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May 5, 2022

The Honorable Kenneth M. Karas
United States District Court
Southern District of New York
The Hon. Charles L. Brieant Jr. Federal Building and United States Courthouse
300 Quarropas Street, Room 533
White Plains, NY 10601-4150

Dear Judge Karas,

I am a third-year student at Columbia Law School, and I have served as an Essays Editor on the *Law Review*. I write to apply for a clerkship in your chambers beginning in 2024 or in any year thereafter.

I aim to pursue a career in litigation. I very much enjoy the process of analyzing and writing about legal issues in collaboration with others, and it would be an honor and a privilege to do so as a clerk while gaining experience in the day-to-day realities of the federal courts. At Columbia, I have honed my research, writing, and collaborative skills by working as a research assistant to two professors, a teaching assistant for Contracts and Corporations, as a mediator at the Columbia Mediation Clinic, and as an extern both in The Honorable Paul A. Engelmayer's chambers and at NYLAG. My note, *Binding the Bound: State Executive Emergency Powers and Democratic Legitimacy in the Pandemic*, has been published in the October 2021 issue of the *Columbia Law Review*. As noted on my transcript, I have received a Best-in-Class award in Evidence during the Fall 2020 semester. I believe that my work experience as well as my research and writing skills have prepared me well for a clerkship in your chambers.

Enclosed please find my resume, law school transcript, undergraduate transcript, and a writing sample. Also enclosed are letters of recommendation from Professors Eric Talley (et2520@columbia.edu, (212) 854-0437), Paul Schechtman (paul.shechtman@bracewell.com, (917) 796-5123), Avery Katz (ak472@columbia.edu; (212) 854-0066), and Thomas Merrill (tmerri@law.columbia.edu, (212) 854-9764). Additionally, The Honorable Paul A. Engelmayer, for whom I worked as an extern, has offered to serve as a reference and can be contacted at (212) 805-0268. Please do not hesitate to contact me should you need any additional information.

Respectfully,

Avi Weiss

AVI WEISS

1075 Ocean Parkway, Brooklyn, NY 11230 • (929) 441-8381 • aw3248@columbia.edu

EDUCATION

Columbia Law School, New York, NY
Juris Doctor expected May 2022
Honors: Harlan Fiske Stone Scholar (2019–2020)
James Kent Scholar (2020–2021)
Best in Class, Evidence
Note: *Binding the Bound: State Executive Emergency Powers and Democratic Legitimacy in the Pandemic*, 121 Colum. L. Rev. 1853 (2021)
Activities: *Columbia Law Review*, Essays Editor
Mediation Clinic
Teaching Assistant to Professor Avery Katz (Contracts, Fall 2020)
Teaching Assistant to Professor Eric Talley (Corporations, Spring 2022)
Research Assistant to Professor Eric Talley (Summer 2020)
Research Assistant to Professor Zohar Goshen (2021–2022)
Society for the Advancement of Law and Talmud, President
First Generation Professionals

Fairleigh Dickinson University, Teaneck, NJ
Bachelor of Arts received September 2019
Major: Individualized Studies, with specialization in Business
Honors: Dean's List (All Semesters)

EXPERIENCE

NYLAG Veterans Practice, New York, NY
Extern Fall 2021
Assisted veterans with researching, drafting, and filing their service-connected disability claims and discharge upgrade cases.

Cravath Swaine & Moore, New York, NY
Summer Associate Summer 2021
Conducted legal research and drafted legal memoranda and briefs relating to merger and corporate governance litigation. Drafted tax provisions for mergers, stock offerings, and credit agreements.

Hon. Paul A. Engelmayer, U.S. District Court, S.D.N.Y., New York, NY
Judicial Extern Spring 2021
Conducted legal research. Drafted memoranda of law and judicial opinions in cases relating to civil procedure, contracts, securities, and criminal law. Cite checked opinions.

New York State Office of the Attorney General, New York, NY
Intern, Real Estate Finance Bureau July 2020 – August 2020
Reviewed real estate offering plans and amendments for compliance with the Martin Act, including condominiums, homeowner associations, cooperatives, and timeshares. Communicated with developers' counsel regarding deficiencies in filings. Researched trial issues for the Enforcement Division. Attended all Enforcement and Review Division meetings.

Law Offices of B. David Schreiber, Cedarhurst, NY
Legal Intern October 2018 – August 2019
Served as sole intern at a small law firm focusing on real estate law. Assisted with all transactions including managing client communications, writing and editing documents, attending closings, and drafting the closing statements.

INTERESTS: Hiking in CO, AZ, UT and the Canadian Rockies; reading history, economics, and science fiction

Columbia
Law School

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CLS TRANSCRIPT (Unofficial)

02/18/2022 11:15:38

Program: Juris Doctor

Abraham Weiss

Spring 2022

Course ID	Course Name	Instructor(s)	Points	Final Grade
L6425-1	Federal Courts	Funk, Kellen Richard	4.0	
L9239-1	Mediation Clinic	Carter, Alexandra	4.0	
L9239-2	Mediation Clinic - Fieldwork	Carter, Alexandra	3.0	
L9522-1	Reading Group: The Essential Meaning of the Rule of Law	Merrill, Thomas W.	1.0	
L6822-2	Teaching Fellows	Talley, Eric	4.0	

Total Registered Points: 16.0

Total Earned Points: 0.0

Fall 2021

Course ID	Course Name	Instructor(s)	Points	Final Grade
L6293-1	Antitrust and Trade Regulation	McCrary, Justin	3.0	B+
L6670-2	Columbia Law Review Editorial Board		1.0	CR
L6169-2	Legislation and Regulation	Kessler, Jeremy	4.0	A-
L6274-1	Professional Responsibility	Kent, Andrew	3.0	A
L6695-1	Supervised JD Experiential Study	Pauley, Rachel S.	2.0	A

Total Registered Points: 13.0

Total Earned Points: 13.0

Spring 2021

Course ID	Course Name	Instructor(s)	Points	Final Grade
L6536-1	Bankruptcy Law	Morrison, Edward R.	4.0	A
L6670-1	Columbia Law Review		0.0	CR
L6238-1	Criminal Adjudication	Shechtman, Paul	3.0	A
L6661-1	Ex. Federal Court Clerk - SDNY [Minor Writing Credit - Earned]	Radvany, Paul	1.0	CR
L6661-2	Ex. Federal Court Clerk - SDNY - Fieldwork	Radvany, Paul	3.0	CR

Total Registered Points: 11.0

Total Earned Points: 11.0

Fall 2020

Course ID	Course Name	Instructor(s)	Points	Final Grade
L6670-1	Columbia Law Review		0.0	CR
L6231-1	Corporations	Talley, Eric	4.0	A-
L6241-1	Evidence	Shechtman, Paul	3.0	A+
L6675-1	Major Writing Credit	Merrill, Thomas W.	0.0	CR
L6683-1	Supervised Research Paper	Merrill, Thomas W.	3.0	A
L6822-1	Teaching Fellows	Katz, Avery W.	4.0	CR

Total Registered Points: 14.0

Total Earned Points: 14.0

Spring 2020

Due to the COVID-19 pandemic, mandatory Credit/Fail grading was in effect for all students for the spring 2020 semester.

Course ID	Course Name	Instructor(s)	Points	Final Grade
L6133-3	Constitutional Law	Ponsa-Kraus, Christina D.	4.0	CR
L6108-3	Criminal Law	Liebman, James S.	3.0	CR
L6256-1	Federal Income Taxation	Raskolnikov, Alex	4.0	CR
L6679-1	Foundation Year Moot Court	Strauss, Ilene	0.0	CR
L6121-19	Legal Practice Workshop II	Askanase, Eric S.	1.0	CR
L6118-1	Torts	Blasi, Vincent	4.0	CR

Total Registered Points: 16.0

Total Earned Points: 16.0

January 2020

Course ID	Course Name	Instructor(s)	Points	Final Grade
L6130-4	Legal Methods II: Financial Methods for Lawyers	Talley, Eric	1.0	CR

Total Registered Points: 1.0

Total Earned Points: 1.0

Fall 2019

Course ID	Course Name	Instructor(s)	Points	Final Grade
L6101-4	Civil Procedure	Huang, Bert	4.0	B+
L6105-5	Contracts	Katz, Avery W.	4.0	A
L6113-2	Legal Methods	Sovern, Michael I.	1.0	CR
L6115-19	Legal Practice Workshop I	Askanase, Eric S.; Neacsu, Dana	2.0	P
L6116-2	Property	Balganesh, Shyamkrishna	4.0	B+

Total Registered Points: 15.0

Total Earned Points: 15.0

Total Registered JD Program Points: 86.0

Total Earned JD Program Points: 70.0

Best In Class Awards

Semester	Course ID	Course Name
Fall 2020	L6241-1	Evidence

Honors and Prizes

Academic Year	Honor / Prize	Award Class
2020-21	James Kent Scholar	2L
2019-20	Harlan Fiske Stone	1L

Pro Bono Work

Type	Hours
Mandatory	40.0
Voluntary	8.0

COLUMBIA LAW SCHOOL
435 West 116th Street
New York, NY 10027

May 06, 2022

The Honorable Kenneth Karas
Charles L. Brieant, Jr. United States Courthouse
300 Quarropas Street, Room 533
White Plains, NY 10601-4150

Re: Avi Weiss

Dear Judge Karas:

This is a letter on behalf of Avi Weiss, who I understand has applied to you for a clerkship. I have come to know Avi in two capacities. First, I supervised an independent research project he undertook in the fall semester of 2020, which eventually evolved into a published Note in the Columbia Law Review (October 2021). This work, and the admiration of his peers, earned him a position as Essays Editor on the Law Review in his third year. Second, Avi has been an active participant in a Reading Group I have conducted this semester (spring 2022) on "The Essential Meaning of the Rule of Law." His performance in both settings was superlative, and I recommend him most enthusiastically.

Let me start with the independent research project/law review note. Avi came to me early in the fall of 2020 (in the midst of our COVID restrictions) saying he was looking for a research topic and potential law review note. He had not been a student in any class I had taught up to that point (I was on sabbatical earlier in the year) but he impressed me with his seriousness of purpose so I said yes. He said he was interested in writing something about the pandemic, and did I have any suggestions. At the time, there was a great deal of turmoil about executive authority to issue emergency stay-at-home orders and whether these could be overturned by legislatures. He readily agreed to work on something in this vein. We met quit frequently after that, generally once a week or every-other week. He did a significant amount of research on gubernatorial authority to issue emergency orders, and what kinds of authority state legislatures have to countermand these orders. His research suggested a common either-or pattern: either the governor had complete discretion to issue an order, and/or the legislature had complete order to countermand it. We both agreed that a more interactive or joint responsibility system would be preferable, both for purposes of achieving greater legitimacy and acceptability of emergency orders, and in preventing over-reactions by either branch of the government.

Avi is a fast worker, and he soon produced a draft that effectively proposed that future emergency authority be subject to review and approval or revision by the legislature. The model was the Congressional Review Act, which requires that major administrative regulations be submitted to Congress for potential disapproval under fast-track procedures. I regard his finished product to be a significant contribution to the literature on emergency authority. It is published as "Binding the Bound: State Executive Emergency Powers and Democratic Legitimacy in the Pandemic," 121 Colum. L. Rev. 1853 (2021).

My second experience with Avi has been in a Reading Group I am currently leading on "The Essential Meaning of the Rule of Law." I had not intended to offer a Reading Group this year, but was asked by members of the local Federalist Society chapter if I would offer one. Whether the "rule of law" has a core meaning or is simply a slogan has been on my mind lately, and I was attracted to the idea of doing some more systematic reading along with some smart Columbia students. Avi signed up for the group, and he has been a stalwart in the discussions. I have been impressed not only by his thoughtfulness, but also by his extremely wide-ranging knowledge of books that bear on the subject. On several occasions, I have asked for suggestions about readings on topics with which I am only casually familiar, like international law, or Nazi Germany, or Communist China, and he has recommended readings that have been illuminating. I have come to appreciate that he has a very broad range of interests, and a true intellectual temperament.

Based on these encounters with Avi, I think he would make a first-rate law clerk. He is open-minded, a quick learner, writes well, works well with others, and can add an extra dimension to projects based on his voracious reading habits. You could hardly go wrong. I urge you to give him the most serious consideration.

Please do not hesitate to call if you have further questions.

Sincerely,

Thomas W. Merrill

Thomas Merrill - tmerri@law.columbia.edu - 212-854-9764

May 06, 2022

The Honorable Kenneth Karas
Charles L. Brieant, Jr. United States Courthouse
300 Quarropas Street, Room 533
White Plains, NY 10601-4150

Re: Avi Weiss

Dear Judge Karas:

I am writing on behalf of Avi Weiss, a rising 3L at Columbia Law School, whom I recommend to you with my fullest enthusiasm in connection with his application for a judicial clerkship for either the 2021-22 or 2022-23 term. My recommendation, which is based on having Avi as a student in my small section of first-year Contracts in the fall 2019 semester, on his serving as my teaching assistant in the same course this past Fall 2020 semester, and on my having read and commented on multiple drafts of his law review note, is without any reservation whatsoever. He is one of a handful of top students I have taught over the course of my 30-year career as a law professor to whom I have given this top recommendation.

(Please note: I am in the unparalleled position this year of having three students who I am giving my top recommendation; you may also receive applications for the other two students as well. All three are outstanding, but of them, Avi has the strongest writing skills, has demonstrated the highest level of intellectual curiosity, and has the strongest command of business law and practice. This last attribute should make him a particularly attractive candidate for judges whose caseload includes a substantial commercial component)

I first met Avi in fall 2019 when he took my introductory class in Contracts. This was a small discussion-based class of 33 students, most of whom participated in class discussion on a regular basis, and who all wrote several short memos for me over the course of the term, in addition to a take-home final exam. Avi was the second strongest student in this class, easily earning an A grade; and his performance on the memos — which asked the students to apply the course material to a variety of short writing assignments similar to those they might be asked to produce in legal practice — was far and away the strongest in the class. He was one of the most thoughtful contributors to class discussion; and was a regular visitor at weekly office hours, where he routinely posed astute and sophisticated questions.

I was also struck during this first semester by Avi's unusual intellectual curiosity. His academic background (business major at an urban campus where a majority of students are commuters, and the first person in his family to pursue a professional degree) was perhaps not as broad as that of some of his peers; but he took being at Columbia as the occasion to make up for studies he had not had a chance to undertake previously. At the same time that he was taking the full 1L course load, he was regularly asking me and his other teachers for reading recommendations in social science fields such as economics, history, and even jurisprudence; and he regularly came by outside of class to talk about these readings, and about ideas in general.

For all these reasons, I was delighted when Avi submitted his application to serve as a teaching assistant in my contract class for fall 2020; and I hired him without hesitation. As you surely know, this last semester was especially challenging for both law students and professors because of the constraints of the COVID pandemic. My section was taught in remote format and comprised students living across four different time zones. For that reason, I hired a larger number of TA's than usual — six in total to assist with a group of 39 1Ls — and relied on them to a greater extent than I usually do to lead review sessions, mentor students, and help manage classroom discussion using the Zoom platform. This group of TA's rose to the occasion and repaid my trust with a higher level of performance and resourcefulness than I had seen in any previous year. But Avi led the way in terms of professionalism, organization, and generosity in offering his time to the 1Ls. In addition, in a semester where it was very tempting to cut corners, Avi kept me focused with questions that made sure that I covered the material with adequate depth. If he felt I had oversimplified an explanation, he made sure to let me know, tactfully and collegially — and he was usually right.

My high regard for Avi's intellectual standards subsequently led me to serve as an unofficial second advisor to his law review note, which analyzed how various US states made use of emergency executive powers during this past year's COVID pandemic. It wasn't my field of expertise, but the topic was timely and fascinating, and Avi's scholarly ambition and expositional clarity made it a rewarding project for me to participate in. I was very pleased when this well-written and important paper was selected for publication in the upcoming December issue of the Columbia Law Review.

There's one last thing I should mention to put Avi's achievements in perspective and to further highlight his intellectual capacities. Namely, he was a little slower out of the gate than other top students in terms of first-semester grades; while he was a top performer in my class, his other fall exams were merely very good. (And then in the second semester, the entire school switched over to pass-fail grading due to Columbia's forced transition to remote instruction.) In my judgment, Avi's first-semester transcript should be read in light of his relatively narrow academic experience before coming to Columbia. There is no doubt in my mind that at this point in his law school career, he has progressed to the point where he is performing at the absolute top level; and I expect him to continue to do so going forward,

I feel fortunate to have taught and worked with Avi in all of these settings and privileged to be able to act as his mentor and

Avery Katz - ak472@columbia.edu - 212-854-0066

recommender. Every year I have numerous students who I expect to be excellent lawyers someday; but there are only a few whom I can identify from the start as lawyers to whom I would recommend clients. Because of his thoughtfulness, intellectual rigor, and professionalism, I expect Avi Weiss to be such a lawyer. For these reasons, I recommend him to you with my warmest enthusiasm and urge you to give his application the fullest possible consideration.

If you have any additional questions in regard to this recommendation, please feel free to contact me via telephone (212-854-0066) or e-mail (ak472@columbia.edu).

Yours very truly,

Avery W. Katz

May 06, 2022

The Honorable Kenneth Karas
Charles L. Brieant, Jr. United States Courthouse
300 Quarropas Street, Room 533
White Plains, NY 10601-4150

Dear Judge Karas:

I write with tremendous enthusiasm to recommend Mr. Abraham (Avi) Weiss, a rising third-year student at Columbia Law School, in connection with his application for a judicial clerkship in your chambers. I have known Mr. Weiss since the summer of 2020, across multiple capacities. He has excelled in each, combining a curious mind, a respectful temperament, and a fertile intellect. I have no doubt that he has the makings of a superb clerk and (after that) an accomplished lawyer. He is a student leader and a trustworthy sounding board, and he has earned my strong and unreserved recommendation.

I first met Avi in the late spring of 2020, when I was recruiting research assistants for a significant empirical project in corporate governance. Although he had not been a student of mine, Avi came highly recommended by one of my colleagues at Columbia (Avery Katz). This project was a challenging one, and it required students to read, understand, and then categorize thousands of corporate governance documents in an effort to audit (and correct) a major corporate governance database in the United States surrounding public companies. Avi was one of over two dozen research assistants working on the project, some of whom were law school graduates. Within weeks, he quickly emerged as the most careful, comprehensive, and responsive of the entire group. His work was invariably on time, unassailably accurate, and a model for all of us. I quickly elevated him through the ranks to become a senior research assistant for the project, and it is largely through his efforts that we were able to complete (and publish in a high-profile journal) our analysis this past fall. He is easily one of the most reliable, careful, and skilled research assistants I have had the pleasure of employing in my entire 25-year career. These traits carry over well to standard expectations for judicial clerks – should you hire him, I have no doubt that they will cause him to shine in that environment as well.

Having been amply rewarded by Avi's service as a research assistant, I subsequently was pleased to see that he was enrolled in my corporations class in the fall of 2020. Because of the pandemic, this was a challenging course to teach, and it required interacting in a hybrid format involving both remote and live students. Avi was excellent in the class, both when cold-called and when volunteering information and insights. His contributions were consistently and notably (but not surprisingly) some of the best in the class. His performance in the course was excellent; his final grade for the class was an A-, and it is important for me to add that this unadorned grade obscures the fact that Avi's exam was at the very top of the A- group. Excruciatingly (for him and me), he missed out on an A by literally hundredths of a (normalized) point. If our mandatory curve did not require me to draw a somewhat artificial cutoff right at his score, his exam in particular would have been deserving of the top categorical score of A. (And I treat it as such.)

Many of Avi's considerable intellectual traits and attention to detail have won both praise and notice by his classmates as well. He has become one of the editorial leaders of the Columbia Law Review, and I hear from his colleagues that he has quickly become one of the most dependable and insightful members of the editorial board.

All these (considerable) talents aside, Avi is a delight to work with. He is respectful, witty, thoughtful, and generous. He cares about his profession and the world, and he seems to have cultivated a set of strong and loyal friendships amongst his classmates (not to mention his professors). I expect I will work to stay in touch with him long after he graduates.

For the foregoing reasons, Mr. Weiss has won my strong recommendation, with no reservations whatsoever.

If you have any questions about this exceptional candidate, please do not hesitate to contact me at the email address and number above.

Sincerely,

Eric L. Talley
Sulzbacher Professor of Law

May 06, 2022

The Honorable Kenneth Karas
Charles L. Brieant, Jr. United States Courthouse
300 Quarropas Street, Room 533
White Plains, NY 10601-4150

Dear Judge Karas:

I write to recommend Avi Weiss for a clerkship. Avi was my student in Evidence in the Spring of 2021 and received the highest grade in a class of 200 students; he got 99 points out of 100 on the exam. As you will see from his transcript, his high grade in my class was not aberrant; he is a Stone Scholar and an Essays Editor on the Law Review.

I have gotten to know Avi outside of class and have talked with him about his upbringing and aspirations. He grew up in the orthodox Jewish Community in New Jersey, where life centered around religious studies. The thought of obtaining a law degree (or pursuing any graduate studies) was unimaginable. But with financial assistance from his wife's family, he decided to leave full-time Talmud studies behind and attend to law school. I am confident that he will be a first-rate law clerk and lawyer.

Avi has a keen sense of humor and is appropriately modest. He is not afraid to voice his opinions, but will not overstep his role. His road to Columbia is "unorthodox" but his path forward in the law is bright. I recommend him to you wholeheartedly.

Sincerely,

Paul Shechtman
Partner
PS/wr

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